THE

LAWYER'S COMPANION. CRIMINAL. MINOR ACTS

VOL. I

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VOL. I

MADRAS:

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CONTENTS OF VOL. I.

CATTLE TRESPASS ACT, I OF 1871.
WORKMAN'S BREACHES OF CONTRACT ACT, XIII OF 1859.
REFORMATORY SCHOOLS ACT, VIII OF 1897.
EXCISE ACT, XII OF 1896.
POLICE ACT, V OF 1861.
OPIUM ACT, I OF 1878.
CANTONMENT ACTS, XIII OF 1889 AND XV OF 1910.
WHIPPING ACT, IV OF 1909.
EXTRADITION ACT, XV OF 1903.
ARMS ACT, XI OF 1878.
OATHS ACT, X OF 1873.
PRISONERS ACT, III OF 1900.
PRISONS ACT, IX OF 1894.
EXPLOSIVES ACT, IV OF 1884.
EXPLOSIVE SUBSTANCES ACT, VI OF 1908.
PETROLEUM ACT, VIII OF 1899.
EUROPEAN VAGRANCY ACT, IX OF 1874.
INDIAN PRESS ACT, I OF 1910.
NEWSPAPER (INCITEMENTS TO OFFENCES) ACT, VII OF 1908.
CRIMINAL LAW AMENDMENT ACT, XIV OF 1908.
PRESS AND REGISTRATION OF BOOKS ACT, XXV OF 1867.
OFFICIAL SECRETS ACT, XV OF 1889.
PREVENTION OF SEDITIOUS MEETINGS ACT, VI OF 1907.

THE LAWYER'S COMPANION SERIES.

THE CATTLE TRESPASS ACT, 1871

(ACT I OF 1871)

(WITH THE CASE LAW THEREON)

BY

T. V. SANJIVA ROW,
FIRST GRADE PLEADER, TRICHINOPOLY.
(AUTHOR OF A "DIGEST OF PRIVY COUNCIL RULINGS,"
THE "CURRENT INDEX OF INDIAN CASES,"
THE "LAWYER'S REFERENCE,"
AND
THE "INDIAN EVIDENCE ACT").

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THE CATTLE TRESPASS ACT, 1871.

TABLE OF CASES NOTED IN THIS VOLUME.

			PAGE.
		I. L. R. Allahabad Series.	
11 A 262 (266)	...	Queen-Empress v. Indarjit ...	7
18 A 353	...	Meghai v. Sheobhik ...	21
29 A 565	...	Emperor v. Mehdi Hasan ...	12, 13
		I. L. R. Bombay Series.	
7 B 126	...	Empress v. Baibaya ...	12, 13
9 Bom 173	...	Queen-Empress v. Shaikh Raju ...	12
9 B 333 (343)	...	Queen-Empress v. W. D. Edwards ...	7
10 B 230	...	Queen-Empress v. Raya Lakhma ...	24
22 B 933	...	Queen-Empress v. Babaji Laxman ...	15
		I. L. R. Calcutta Series.	
2 C 225	...	The Empress of India v. Diljour Misser ...	9
13 C 304	...	Kala Chand v. Gudadhur Biswas ...	21
14 C 175	...	Neaz v. Monsor ...	23
15 C 712	...	Dhiku v. Deno Nath Deb ...	21, 24
16 C 159	...	Shuttrughon Das Coomar v. Hokna Showtal ...	21, 30
22 C 139 (143)	...	Paryag Rai v. Ayu Mian ...	23, 24, 26
23 C 248	...	Nedaram Thakur v. Joonab ...	20, 21, 23
23 C 300	...	Shama v. Lechhu Shekh ...	20
23 C 442	...	Raghu Singh v. Abdul Wahab ...	20, 21
31 C 350	...	Surjya Kanta Roy Chowdhury v. Emperor ...	21
34 C 926	...	Budhan Mahto v. Issur Singh ...	20, 21
		I. L. R. Madras Series.	
7 M 345	...	Shaikh Husain v. Sanjivi ...	24, 25
9 M 102	...	Pitchi v. Ankappa ...	20, 21
9 M 374	...	Kottalanada v. Muthaya ...	20, 21
11 M 359	...	Khadar Khan, *In re* ...	24
19 M 238	...	Queen-Empress v. Lakshmi Nayakan ...	24
24 M 318	...	Queen-Empress v. Lakshmanna ...	14, 27
29 M 517	...	Ponnusami, *In the matter of* ...	21 24
31 M 133	...	Lakhshmi Narasappa v. Mekala Venkatappa ...	24
		Allahabad Weekly Notes.	
(1896) A W N 136...		Queen-Empress v. Jawahir ...	20
(1905), A W N 143..		Emperor v. Someshar Das ...	20
		Bombay High Court Reports.	
4 B H C R (Cr) 13.		Reg v. Mathur Purshotam ...	10
4 Bom H C R (Cr Cas) 14	...	Reg v. Lingana *bin* Giubana ...	14

Bombay High Court Reports—(*Concluded*). PAGE

7 B H C R (Cr Ca) 155	Reg v. Durgaram Madhavram	...	16
8 Bom H C R 22 (Cr Ca)	Reg v. Avji *bin* Naru *et al*	...	22
9 Bom H C R 164	Reg v. Vakta *valad* Lakhu	...	30

Bombay Law Reporter.

2 Bom L R 335	Queen-Empress v. Savlyaram Gangaram	...	29
5 Bom L R 205	Emperor v. Dhanjisha Dadabhoy	...	22
8 Bom L R 549	Emperor v. Joti Babu	...	13

Ratanlal's Unreported Criminal Cases.

Rat Unrep Cr Cas 11	Reg v. Toorebajkhan	...	14
Rat Unrep Cr Cas 60	Reg v. Lingu	...	29
Rat Unrep Cr Cas 185	Queen-Empress v. Narsu	...	13
Rat Unrep Cr Cas 189	Queen-Empress v. Rangu	...	13
Rat Unrep Cr Cas 199	Queen Empress v. Hyderally	...	13
Rat Unrep Cr Cas 294	Queen-Empress v. Kaoji	...	26
Rat Un Cr Cas 318	Queen-Empress v. Vithu	...	13
Rat Unrep Cr Cas 357	Queen-Empress v. Narsu	...	13
Rat Unrep Cr Cas 867	Queen-Empress v. Ramzan Shakebhai	...	29

Calcutta Weekly Notes.

9 C W N 624	Ram Karan Thakur v. The Emperor	...	12

Bengal Law Reports.

6 B L R App 3	Forbes v. Grish Chandra Bhuttacharjee	...	12
8 B L R Appx 1	Queen v. Rajkrishna Biswas	...	19
2 C L R 344	Aslem v. Kalla Durzi	...	21
2 C L R 507	Ketabdi Mundul, *In the matter of*	...	21, 24, 25

Sutherland's Weekly Reporter.

7 W R 155 (Civil Rulings)	Mr. James Hills v. Sree Huree Roy	...	26, 27
10 W R 29 (Cr)	Araz Sircar *Case of*	...	12
10 W R (Cr R) 42	Akbar Taqudgeer v. Punchoo Biswas	...	27
14 W R 31	Major Forbes v. Grish Chunder Bhuttacharjee	...	12
15 W R 279 (Civil Rulings)	Nomaz Mollah v. Lall Mohun Tagudgeer	...	21, 30
16 W R (Cr) 12	Mohesh Nath v. Hurro Mohun Ghosal	...	9
16 W R 52 (Cr)	Rajkristo Biswas, *In re*	...	19
23 W R 2 (Cr)	Sheikh Tunnoo v. Kureem Baksh	...	22
24 W R 7	Aradhun Mundul v. Myan Khan Takatgeer	...	23

			PAGE
	Madras High Court Reports.		
5 M H C R App 21..	———————————	...	24
5 M H C R App 29..	———————————	...	13
6 M H C App 36 ...	———————————	...	13
7 M H C R App 22.	———————————	...	24
7 M H C R App XXIV ...	———————————	...	25
	Central Pro. Law Reports.		
11 C P L R 10 (Cr)..	Karim Khan v. Nathoosa	...	20, 21, 24, 25
	N. W. P. H. C. Reports.		
3 N W P H C R 200	Gunesh Pershad, *In re*	...	24
	Punjab Record.		
1 P R 1872 (Cr) ...	Alla Ditta v. Shere Mahomed	...	28
92 P R 1877 (Civil)..	Surjan v. Bhowani Sahai	...	21, 30
25 P R 1878 (Cr) ...	Gulzari Mal v. Malla	...	25
36 P R 1878 (Cr) ...	Wazira v. Dulla	...	25
37 P R 1878 (Cr). ...	Sultan v. Rukan Din	...	25
26 P R 1879 (Cr) (F B) ...	Luchman Das v. Ala Singh	...	20
5 P R 1880 (Cr) ...	Jahana v. Raja	...	25
12 P R 1882 (Cr) ...	Bassawa Singh v. Empress	...	28
22 P R 1886 (Cr) ...	Emperor v. Baksh	...	24
4 P R 1891 (Cr) ...	Hadu v. Queen-Empress	...	26
23 P R 1904 (Cr) ...	King-Emperor v. Ghazi	...	14
	Lower Burma Rulings.		
L B R (1872-1892) 429 ...	Queen-Empress v. Paung Tin	...	26
L B R (1872-1892) 515 ...	Queen-Empress v. Mi Min Kaung	...	24, 25
4 L B R 10 ...	King-Emperor v. Mi Hari Ma	...	24
4 L B R 11 ...	King-Emperor v. Tha Nyo U	...	24
	Criminal Law Journal of India.		
2 Cr L J 345 ...	Ram Karan Thakur v. Emperor	...	12
5 Cr L J 86 ...	Ponnusami, *In re*	...	21
6 Cr L J 111 ...	Lachman Das v. Emperor	...	24
6 Cr L J 122 ...	Emperor v. Tha Nyo U	...	24
6 Cr L J 363 ...	Budhan Mahto v. Issur Singh	...	20, 21
	Weir's Criminal Rulings.		
1 Weir 29 ...	Thornotti Madathil Poker	...	13
1 Weir 487 ...	———————————	...	13
1 Weir 492 ...	Gurram v. Siddugadu	...	13, 23
1 Weir 495 ...	Thornotti Madathil Poker	...	13
1 Weir 497 ...	———————————	...	13
1 Weir 709 ...	Dasari, *In re*	...	13
1 Weir 710 ...	Pitchi v. Ankappa	...	21, 25
1 Weir 711 ...	———————————	...	21. 24
1 Weir 712 ...	Ponnusami *In re*	...	24
1 Weir 713 ...	Singadi Sanjivi *In re*	...	25
1 Weir 715 ...	Pasupuleti Govindu *In re*	...	25
1 Weir 716 ...	Queen-Empress v. Lakshmanna	...	14, 27

THE CATTLE TRESPASS ACT, 1871.

CONTENTS.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Title and extent.
2. Repeal of Acts
   References to repealed Acts.
3. Interpretation-clause.

CHAPTER II.

POUNDS AND POUND-KEEPERS.

4. Establishment of pounds
5. Control of pounds.
   Rates of charge for feeding impounded cattle.
6. Appointment of pound-keepers.
   Ex officio pound-keepers in Madras and Bombay.
   Suspension or removal of pound-keepers.
   Pound-keepers may hold other offices.
   Pound-keepers to be "public servants."

Duties of pound-keepers.

7. To keep registers and furnish returns.
8. To register seizures.
9. To take charge of and feed cattle.

CHAPTER III

IMPOUNDING CATTLE.

10. Cattle damaging land.
    Police to aid seizures.
11. Cattle damaging public roads, canals and embankments.
12. Fines for cattle impounded
    List of fines and charges for feeding.

CHAPTER IV.

DELIVERY OR SALE OF CATTLE.

SECTIONS.

13. Procedure when owner claims the cattle and pays fines and charges.
14. Procedure if cattle be not claimed within a week.
15. Delivery to owner disputing legality of seizure, but making deposit.
16. Procedure when owner refuses or omits to pay the fines and expenses.
Deduction of fines and expenses.
Delivery of unsold cattle and balance of proceeds.
Receipt.
17. Disposal of fines, expenses and surplus proceeds of sale.
18. Application of fines and unclaimed proceeds of sales.
19. Officers and pound-keepers not to purchase cattle at sales under Act.
Pound-keepers when not to release impounded cattle.

CHAPTER V.

COMPLAINTS OF ILLEGAL SEIZURE OR DETENTION.

20. Power to make complaints.
21. Procedure on complaint.
22. Compensation for illegal seizure or detention.
Release of cattle.
23. Recovery of compensation.

CHAPTER VI

PENALTIES.

24. Penalty for forcibly opposing the seizure of cattle or rescuing the same.
25. Recovery of penalty for mischief committed by causing cattle to trespass.
26. Penalty for damage caused to land or crops or public roads by pigs.
27. Penalty on pound-keeper failing to perform duties.
28. Application of fines recovered under section 25, 26 or 27.

CHAPTER VII.

SECTIONS. SUITS FOR COMPENSATION.

29. Saving of right to sue for compensation.
30. Set-off.

CHAPTER VIII.

SUPPLEMENTAL.

31. Power for Local Government to transfer certain functions to local authority and direct credit of surplus receipts to local funds.

THE CATTLE TRESPASS ACT, 1871.

ACT No. I OF 1871.

RECEIVED THE ASSENT OF THE GOVERNOR GENERAL OF INDIA IN COUNCIL ON THE 13TH JANUARY 1871.

An Act to consolidate and amend the law relating to Trespasses by Cattle.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to trespasses by cattle[1]; It is hereby enacted as follows :—

(Notes).

1.—"Whereas....cattle."

(1) Preamble, nature of.

The preamble of an Act has been called a key to its understanding and may properly be consulted in order to fix generally the scope or limit of a statute. 9 B. 333 (343). **A**

(2) Object of preamble.

And its purpose is to set out in general terms the object of the Legislature in passing the Act. 11 A. 262 (266). **B**

(3) Consolidation—Purpose and intention of the Legislature.

The purpose of an Act is to lay down the law definitely on any point specifically dealt with by it, to exclude all possible controversy by means of a positive enactment and to avoid the trouble of roaming over a vast number of authorities in order to discover what the law was and extracting it by a minute critical examination of the prior decisions. 23 C. 563 (572). **C**

CHAPTER I.

PRELIMINARY.

Title and extent.

1. (1) This Act may be called the Cattle-trespass Act, 1871; and

(2) It extends to the whole of British India[1] except the Presidency-towns and such local areas as the Local Government, by notification in the official Gazette, may from time to time exclude from its operation.

(3) The Local Government may at any time, by notification in the official Gazette, cancel or vary a notification under sub-section (2) [2].

(Notes).

1.—"It extends ...India."

(1) **British India, meaning of.**

For the meaning of the word 'British India," see S 3, cl. 2, of the General Clauses Act, X of 1897. **D**

(2) **The date of its having come to force**

Where any Act of the Governor-General in Council is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent of the Governor-General. (See S 5 of Act X of 1897). So the Cattle Trespass Act I of 1871 has come into force on the 13th January 1871 on which date it received the assent of the Governor-General in-Council. **E**

(3) **The places where this Act is in force.**

(*a*) British India (except the Presidency towns). **F**

(*b*) Upper Burmah generally (See II Schedule to Act XX of 1886). **G**

(*c*) The Santal Pergunnahs (See the Schedule to the Santal Pergunnahs Regulation III of 1886). **H**

(*d*) The Districts of
(i) Hazaribagh
(ii) Lohardagu.
(iii) Manbhum.
(iv) Parghana Dhalbum.
(v) The Konkan in the District of Singhbhum.
(vi) and certain other Scheduled Districts.

(See the Scheduled Districts Act XIV of 1874 and also the Gazette of India, October 22 of 1881, Part I, p. 504) **I**

(*e*) The North West Provinces Tarai. **J**

(See Gazette of India, September 23 of 1876, Part I, p. 505). **K**

2.—"The Local Government....sub-section (2)."

Transfer of functions of Local Government and District Magistrates to local authorities.

As to —, see the following .–

(*a*) The Central Provinces Local Self-Government Act I of 1883, S 9, cl. *(f)*. **L**

(*b*) The North-West Provinces and Oudh Local Boards Act XIV of 1883, S. 24, cl. *(f)*. **M**

(*c*) and the Punjab District Boards Act XX of 1883, S. 20, (2) cl (*n*)

See also S. 6, *infra*. **N**

Repeal of Acts.

2. The Acts mentioned in the schedule hereto annexed are repealed[1].

References to repealed Acts.

References to any of the said Acts in Acts passed subsequently thereto shall be read as if made to this Act[2].

All pounds established, pound-keepers appointed and villages determined under Act No. III of 1857 (*relating to trespasses by cattle*) shall be deemed to be respectively established, appointed and determined under this Act.

(Notes).

1.—"The Acts....repealed."

(1) **Acts repealed hereby.**

(*a*) Act III of 1857 (An Act relating to trespass by cattle). **O**

(*b*) Act V of 1860 (An Act to amend Act III of 1857). **P**

(*c*) Act XXII of 1861 (Do.) **Q**

(2) **Acts amending this Act and subsequently enacted.**

(*a*) Act XVIII of 1883 (to amend the Cattle Trespass Act I of 1871). **R**

(*b*) Act I of 1891 (amending Act I of 1871 and repealing Act XVIII of 1883). **S**

(3) **Act I of 1891.**

(*a*) ORDERS UNDER ACT XVIII OF 1883, HOW TO BE CONSTRUED.

Orders which have been made and notified under Act XVIII of 1883 by the Local Government and are in force immediately before the commencement of Act I of 1891, shall be deemed to have been made under the Cattle Trespass Act I of 1871, as amended by Act I of 1891. (See S. 10 of Act I of 1891). **T**

(*b*) ENACTMENTS AND DOCUMENTS REFERRING TO PREVIOUS ACTS.

Any enactment or documents referring to the Cattle Trespass Act, 1871, or to Act XVIII of 1883, shall be construed to refer to the Cattle Trespass Act, 1871, as amended by the Act of 1891. (See S. 12 of Act I of 1891). **U**

(4) **Conviction under the old Act—Legality.**

A conviction under the old Act (III of 1857) such as that of illegally seizing certain cattle under S. 14 of that Act and not under S. 24 of Act I of 1871 is legal even though the new Act had come into force at the time of committing the offence and the passing of sentence, if such conviction could be justified by the evidence in the case. For in such a case, Act I of 1871 (S. 24) which re-enacted the old law (S. 14 of Act III of 1857) was in force at the time of committing the offence and hence no injustice was done thereby. 16 W.R. (Cr.) 12. *Contra* 2 C. 225. **V**

(5) **S 13 of Act III of 1857—Act XVII of 1862—Effect of repeal.**

(*a*) The power conferred under S. 13 of Act III of 1857, is not affected by the repealing section of Act XVII of 1862. 1 B. 100. **W**

1.—"The Acts....repealed"—(Concluded).

(b) But the latter portion of that section having been repealed by Act XVII of 1862, the offences created by that section can be dealt with by the ordinary criminal tribunals, subject to the Criminal Procedure Code. 4 B.H.C.R. (Cr.), 13. **X**

(6) **Cattle Trespass Act III of 1857, S. 18—Jurisdiction.**

As no special provision was made in Act III of 1857 as to the authority by which offences under S. 18 of that Act were to be tried, S. 21 of the Criminal Procedure Code (1861) gives jurisdiction to the first class subordinate Magistrates. 5 B.H.C.R. (Cr. Ca.) 13. **Y**

2.—"References....this Act."

See in this connection S. 8 of the General Clauses Act X of 1897.

Interpretation-clause.

3. In this Act,—

officer of police includes also village-watchman, and

cattle includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats, and kids, [and

local authority means any body of persons for the time being invested by law with the control and administration of any matters within a specified local area [1], and

local fund means any fund under the control or management of a local authority.]

(Notes).

General.

Effect of interpretation clause.

It must always be remembered that the effect of an interpretation clause is to give the meaning assigned by it to the word interpreted in all places of the Act in which the word occurs. Such words must, unless the contrary plainly appears, be understood in accordance with the meaning put upon it by the interpretation clause and they ought not to have annexed to them every incident which may seem to be attached to them by any other Act of the Legislature. 12 C. 430 (433). **Z**

1.—"Local authority....area."

N.B.—This and also the next para have been added by S. 2 of Act I of 1891. **Z 1**

CHAPTER II.

POUNDS AND POUND-KEEPERS.

Establishment of pounds.

4. Pounds shall be established at such places as the Magistrate of the District, subject to the general control of the Local Government, from time to time directs.

The village by which every pound is to be used shall be determined by the Magistrate of the District.

Control of pounds. Rates of charge for feeding impounded cattle.

5. The pounds shall be under the control of the Magistrate of the District; and he shall fix, and may from time to time alter, the rates of charge for feeding and watering impounded cattle.

Appointment of pound-keepers.

6. The Magistrate of the District shall also appoint for each pound a pound-keeper:

Ex officio pound-keepers in Madras and Bombay.

Provided that, in the Presidency of Fort St. George, the heads of villages and in the Presidency of Bombay, the police pátils or (where there are no police pátils) the heads of villages, shall be *ex officio* the keepers of village-pounds.

Suspension or removal of pound-keepers.

Every pound-keeper appointed by the Magistrate of the District may be suspended or removed by such Magistrate.

Pound-keepers may hold other offices.

Any pound-keeper may hold simultaneously any other office under Government.

Pound-keepers to be "public servants."

Every pound-keeper shall be deemed a public servant within the meaning of the Indian Penal Code.

Duties of Pound-keepers.

To keep registers and furnish returns.

7. Every pound-keeper shall keep such registers and furnish such returns as the Local Government from time to time directs.

To register seizures.

8. When cattle are brought to a pound, the pound-keeper shall enter in his register,—

(*a*) the number and description of the animals,

(*b*) the day and hour on and at which they were so brought,

(*c*) the name and residence of the seizer, and

(*d*) the name and residence of the owner, if known,

and shall give the seizer or his agent a copy of the entry.

To take charge of and feed cattle.

9. The pound-keepers shall take charge of, feed and water the cattle until they are disposed of as hereinafter directed.

CHAPTER III.

IMPOUNDING CATTLE.

Cattle damaging land.

10. The cultivator or occupier of any land [1], or any person who has advanced cash for the cultivation of the crop or produce on any land [2], or the vendee or mortgagee of such crop or produce, or any part thereof,

may seize or cause to be seized any cattle trespassing on such land, and doing damage thereto or to any crop or produce thereon [3], and send them or cause them to be sent within twenty-four hours [4], to the pound established for the village in which the land is situate.

Police to aid seizures.

All officers of police shall, when required, aid in preventing (*a*) resistance to such seizures, and (*b*) rescues from persons making such seizures.

(Notes).

1.—" The cultivator or occupier of any land."

(1) **Persons entitled under S. 10.**

The section empowers :—

(*a*) the cultivator of any land

(*b*) or the occupier of any land

(*c*) or any person who has advanced cash for the cultivation of the crop or the produce on the land

(*d*) or the vendee
(*e*) or the mortgagee

of such crop or produce or any part thereof to seize or cause to be seized any cattle trespassing upon such land and doing damage to any crop or produce thereon or take or cause them to be taken to the pound. 9 C.W.N. 624. **A**

(2) **Person having any other interest in land is not entitled under this section.**

It is not sufficient for the purposes of this section that a person has some kind of interest in the crop. The interest must be one coming within this section. 9 C.W.N. 624. **B**

2.—" Or any person.... land."

Servant of a factory, whether empowered to seize cattle.

Where an indigo factory supplies the seeds, pays for for the labour of sowing, and gives compensation to ryots growing indigo on their own land, but no advance in cash has been made, *held*, that although the indigo is grown for the factory, a servant of the factory is not a person authorised under S. 10 of the Cattle Trespass Act I of 1871, to seize cattle doing damage to the indigo. 9 C.W.N. 624=2 Cr.L.J. 345. **C**

3 —" May seize.... thereon."

(1) **Difference between this section and S. 425, I.P.C.**

(*a*) In order to convert the causing of damage by cattle, straying into the land into the offence of "mischief," it must be proved,

(i) That the owner actually and wilfully caused the cattle to enter the land, knowing that by so doing he was likely to cause damage. 14 W.R. 31; 10 W.R. 29; 6 B.L.R. App. 3; 7 B. 126; 29 All. 565 and 9 Bom. 173. **D**

3.—"May seize.....thereon"—(Concluded).

(ii) Or at least that he was present and able to restrain the animal from causing damage and refrained from restraining it. Rat. Unrep. Cr. Cas. pp. 357 and 318. **E**

(iii) Or that the owners of cattle, knowing their animals to be not properly provided with fodder and accustomed to stray in search of food, intentionally omitted to secure their cattle or neglected to take reasonable precautions for their care and custody. For, S. 32, I.P.C., provides that except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions. But such omission or neglect on the part of the owner must be such as to have an active effect conducing to the result, as a link in a chain of facts from which an intention to bring about the result may be inferred. 1 Weir 495 = 1 Weir 29 ; see, also, 8 Bom. L.R. 549. **F**

(*b*) (i) But under this section (S. 10 of Act I of 1871), no such intention is necessary and neglect or carelessness on the part of an owner of cattle to keep them from straying into the fields is no plea, as it would be under S. 425, I.P.C. Rat. Unrep. Cr. Cas. pp. 185, 189 and 199 and 6 M.H.C. App. 36 = 1 Weir 487. **G**

N.B.—But see the following decision :—

The accused grazed their cattle in certain waste land which was not reserved within S. 16 of the Forests Act, in contravention of a notification by Government prohibiting the public from grazing cattle there, as it was intended to constitute the lands as forest reserve. The grass in the land was found to have been in the possession of the Government who were in the habit of selling the grass grown on the lands at fixed prices. It was also found that the accused knew that by so grazing they would cause wrongful loss to Government. *Held* that the accused were guilty of an offence under S. 426, I.P.C. 1 Weir 492. **H**

Note :—In this case provision was made for the public, grazing their cattle elsewhere. (*Ibid.*) **I**

(ii) Section 10 of Cattle Trespass Act I of 1871 provides for the minor offence of negligence in guarding an animal which strays into the ground of a person, not its owner. While the graver offence is provided for in S. 425, I.P.C. 7 B. 126 and 29 A. 565. **J**

(2) **Grazing cattle on lands rented from Government, without the payment of fees.**

A complainant, having leased from the Government the right of collecting grazing fees on waste lands cannot charge the defendants with any offence for grazing their cattle without payment of the usual capitation fee. The accused in such a case will only be liable to a civil action. 1 Weir 497 = 5 M.H.C.R. App. 29. **K**

(3) **Actual trespass necessary.**

It is only when cattle are actually trespassing that they can be seized and impounded under S. 10. 1 Weir 709. **L**

(4) **Damage must have been caused.**

Where a cattle, which trespasses on another's land, is not doing any damage, the owner of the land is not entitled to impound the cattle. 1 Weir 709. **M**

4.—"And send them....hours."

"Send them or cause them to be sent within twenty-four hours."

The words———have been by S. 3 of Act I of 1891 substituted for the words, "take them, or cause them to be taken without unnecessary delay" in the Act I of 1871. (See S. 3 of Act I of 1891). **N**

Cattle damaging public roads, canals and embankments.

11. Persons in charge of public roads, pleasure-grounds, plantations, canals, drainage-works, embankments and the like, and officers of police, may seize, or cause to be seized [1], any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments, and the like, or the sides or slopes of such roads, canals, drainage-works or embankments, or found straying thereon [2],

and shall [send them or cause them to be sent within twenty-four hours [3]] to the nearest pound.

(Notes).

1.—"Persons....or cause to be seized."

(1) **Permitting cattle to stray—Intention to cause wrongful loss.**

Merely permitting cattle to stray cannot be held to establish any intention of causing "wrongful loss" to the public or any person, under S. 23 of the Indian Penal Code. Rat. Unrep. Cr. Cas. 11. **O**

(2) **Government Garden—Trespass by cattle in the absence of the accused.**

A person cannot be held liable for any offence under S. 426, I.P.C., where in the absence of the accused, his cattle entered upon the Government Garden, unless a dishonest intention on the part of the accused is proved by the prosecution. 23 P.R. 1904 (Cr.) **P**

(3) **Application of this section to other Acts.**

(*a*) The provisions of this section have been applied to trespass by cattle on reserved and protected forest. (See S. 69 of Act VII of 1878). **Q**

(*b*) They have likewise been applied to the straying of cattle into the ground enclosed between the fences on either side of the Railroad. (See S. 125 of Act IX of 1890). **R**

(4) **Officers of the Public Works Department—Land trespassed upon not proved to be their property—Seizing of cattle not legal.**

The seizure by the officers of the Public Works Department of certain cattle trespassing on certain land which no evidence showed to be public property in charge of that Department, is illegal. 24 M. 318=1 Weir 716. **S**

(5) **Public road—Damage.**

The right to use a public road is a limited one and the use of the same for purposes other than those allowed amounts to trespass. An offence under this section can be committed by causing damage to a public road by allowing the cattle to stray. 4 B. H.C.R. (Cr. Cas.) 14. **T**

2.—"Or found straying thereon."

No damage is necessary.

If cattle were found straying in a reserved forest, (S. 11 of the Cattle Trespass Act I of 1871 being applicable to forests by S. 69 of the Indian Forests Act of 1878), the seizure would be legal even if no damage has actually been done. 22 B. 933. **U**

3.—"Send them or....hours."

These words are new.

The words "send them——hours" have been substituted for the words "take them or cause them to be taken without unnecessary delay." (See S. 4 of Act I of 1891). **Y**

Fines for cattle impounded.

12. For every head of cattle impounded as aforesaid, the pound-keeper shall levy a fine according to the following scale [1]:—

Elephant	... two rupees.
Camel or buffalo	... eight annas.
Horse, mare, gelding, pony, colt, filly, mule, bull, bullock, cow or heifer	... four ,,
Calf, ass or pig	... two ,,
Ram, ewe, sheep, lamb, goat or kid	... one anna.

Provided that when it appears to the Local Government from the report of a Magistrate of a District, or on the representation of a local authority, that, in any local area subject to the jurisdiction or control of such Magistrate or authority, cattle are habitually allowed to trespass on land and damage crops or other produce thereon, the Local Government may, by notification in the official Gazette, direct that, for every head of cattle of any kind specified therein which may be seized within such local area and impounded as aforesaid, the pound-keeper shall levy such fine, not exceeding double the fine mentioned in the foregoing scale, as may be prescribed in the notification. [2]

All fines so levied shall be sent to the Magistrate of the District through such officer as the Local Government from time to time directs.

List of fines and charges for feeding.

A list of the fines and of the rates of charge for feeding and watering cattle shall be stuck up in a conspicuous place on or near to every pound.

[The Local Government may at any time, by notification in the official Gazette, cancel or vary a notification under the proviso to the first paragraph of this section [3].]

(Notes).

1.—"Shall levy a fine....scale."

(1) **Fine under this section—No punishment.**

(*a*) A fine levied by a pound-keeper is not a punishment imposed on conviction for an offence. 7 B.H.C.R. (Cr. Ca.) 155. **W**

(*b*) A Magistrate is in error in holding that a person cannot be tried for an offence under Act XXVI of 1850 because he has paid a fine under this Act. The law (see Crim Pro. Code, S. 55) only provides that a person who has once been tried for an offence and convicted or acquitted of such offences shall not be liable to be tried again for the same offence. In such cases the Magistrate of the District has it in his power to take such steps as he may see fit. (*Ibid*). **X**

(2) **S. 69 of Indian Forests Act—Impounding—Scale of fine.**

For power to prescribe a different scale for cattle impounded under S. 69 of the Indian Forests Act, see S. 70 of Act VII of 1878. **Y**

2.—" The pound-keeper....notification."

(1) **Proviso newly inserted.**

This proviso has been added by S. 5 of Act I of 1891. **Z**

(2) **Double rates in the following areas.**

Double the fine mentioned in the following scale shall be levied, as prescribed in the notification in :—

(*a*) Portions of the Nilgiri District. (See Fort St. George Gazette, 1897, Part I, p. 1077). **A**

(*b*) The Cantonment of Wellington. (See Fort St. George Gazette, 1899, Part I, p. 1110). **B**

(*c*) Wynaad Taluq, Malabar District. (See Fort St. George Gazette, 1891, Part I, p. 844). **C**

(*d*) Area comprised within a radius of three miles from the Emerald Valley. (See Fort St George Gazette, 1903, Part. I, p. 767). **D**

(*e*) The Cantonment of St. Thomas Mount. (See Fort St. George Gazette, 1903, Part I, p. 1065). **E**

3.—" The Local Government....section."

This last paragraph has been newly added. (See S. 5 of Act I of 1891). **F**

CHAPTER IV.

DELIVERY OR SALE OF CATTLE.

Procedure when owner claims the cattle and pays fines and charges.

13. If the owner of the impounded cattle or his agent appear and claim the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle.

The owner or his agent, on taking back the cattle, shall sign a receipt for them in the register kept by the pound-keeper.

Procedure if cattle be not claimed within a week.

14. If the cattle be not claimed within seven days from the date of their being impounded, the pound-keeper shall report the fact to the officer in charge of the nearest police-station, or to such other officer as the Magistrate of the District appoints in this behalf.

Such officer shall thereupon stick up in a conspicuous part of his office a notice stating—

(*a*) the number and description of the cattle,

(*b*) the place where they were seized,

(*c*) the place where they are impounded,

and shall cause proclamation of the same to be made by beat of drum in the village and at the market-place nearest to the place of seizure.

If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said officer, or an officer of his establishment deputed for that purpose, at such place and time and subject to such conditions as the Magistrate of the District by general or special order from time to time directs :

Provided that, if any such cattle are, in the opinion of the Magistrate of the District, not likely to fetch a fair price if sold as aforesaid, they may be disposed of in such manner as he thinks fit.

Delivery to owner disputing legality of seizure, but making deposit.

15. If the owner or his agent appear and refuse to pay the said fines and expenses, on the ground that the seizure was illegal and that the owner is about to make a complaint under section 20, then, upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him.

Procedure when owner refuses or omits to pay the fines and expenses.

16. If the owner or his agent appear and refuse or omit to pay or (in the case mentioned in section 15) to deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction by such officer at such place and time and subject to such conditions, as are referred to in section 14.

Deduction of fines and expenses.

The fines leviable and the expenses of feeding and watering, together with the expenses of sale, if any, shall be deducted from the proceeds of the sale.

Delivery of unsold cattle and balance of proceeds.

The remaining cattle and the balance of the purchase-money, if any, shall be delivered to the owner or his agent, together with an account showing—

(*a*) the number of cattle seized,

(*b*) the time during which they have been impounded,

(*c*) the amount of fines and charges incurred,

(*d*) the number of cattle sold,

(*e*) the proceeds of sale, and

(*f*) the manner in which those proceeds have been disposed of.

Receipt.

The owner or his agent shall give a receipt for the cattle delivered to him and for the balance of the purchase-money (if any) paid to him according to such account.

Disposal of fines, expenses and surplus proceeds of sale.

17. The officer by whom the sale was made shall send to the Magistrate of the District the fines so deducted.

The charges for feeding and watering deducted under section 16 shall be paid over to the pound-keeper, who shall also retain and appropriate all sums received by him on account of such charges under section 13.

The surplus unclaimed proceeds of the sale of cattle shall be sent to the Magistrate of the District, who shall hold them in deposit for three months, and if no claim thereto be preferred and established within that period, shall, at its expiry, dispose of them as hereinafter provided.

Application of fines and unclaimed proceeds of sales.

18. Out of the sums received on account of fines and the unclaimed proceeds of the sale of cattle shall be paid—

(*a*) the salaries allowed to pound-keepers under the orders of the Local Government;

(*b*) the expenses incurred for the construction and maintenance of pounds, or for any other purpose connected with the execution of this Act;

And the surplus (if any) shall be applied, under orders of the Local Government, to the construction and repair of roads and bridges and to other purposes of public utility [1]

(Notes).

1.—"And the surplus, if any....utility."

Crediting of the surplus to Local Funds.

As regards the—, refer to.,

(*a*) The Central Provinces Local Self-Government Act. I of 1883, S. 23 (1), cl. (*c*). **G**

(*b*) and the North-West Provinces and Oudh Local-Boards Act, XIV of 1883, S. 38, cl. (*e*). **H**

Officers and pound-keepers not to purchase cattle at sales under Act.

19. No officer of police or other officer or pound-keeper appointed under the provisions herein contained, shall, directly or indirectly, purchase any cattle [1] at a sale under this Act.

Pound-keepers when not to release impounded cattle.

No pound-keeper shall release or deliver any impounded cattle otherwise than in accordance with the former part of this Chapter, unless such release or delivery is ordered by a Magistrate or Civil Court.

(Notes).

1.—"No officer of police....shall directly or indirectly purchase any cattle."

Purchase by a Sub-Inspector of Police.

Where a Sub-Inspector of Police was charged with having purchased a pony which had been impounded (in this case, he having paid almost the approximate value of the animal), he ought to be convicted under this section and S. 169, I.P.C. *Per Kemp, O.C.J.*, in 8 B.L.R. Appx. 1 (1871), and 16 W.R. 52 (Cr.). **I**

CHAPTER V.

COMPLAINTS OF ILLEGAL SEIZURE OR DETENTION.

Power to make complaints.

20. Any person whose cattle have been seized under this Act, or, having been so seized, have been detained in contravention of this Act, may, at any time within ten days from the date of the seizure, make a complaint to the Magistrate [1] of the District or any Magistrate authorized to receive and try charges [2] without reference by the Magistrate of the District.

(Notes).

General.

(1) **Summary trial.**

(*a*) Offences and complaints under this section are triable summarily. See S. 260 (1), cl. (*m*), Cr. Pro. Code and 1896 A.W.N. 136. **J**

(*b*) Although it may be admitted that the object of a summary procedure is to shorten the course of the trial, it is, nevertheless, incumbent upon the Magistrate to put on record sufficient evidence to justify the order. 27 C. 450. (*Contra* A.W.N. (1905) 143). **K**

N.B.—This is a case under the Indian Forests Act VII of 1878. But the principle applicable is all the same.

(2) **Old Criminal Procedure Code, otherwise.**

Under the old Code, the illegal seizure of cattle was not an offence within the meaning of the Criminal Procedure Code and so not triable summarily. 9 M. 102, 374 and 23 C. 248. **L & M**

(3) **Chapter V, altered.**

Chapter V has been substituted for the original by Act I of 1891, S. 6. **N**

1.—"Make a complaint to the Magistrate."

(1) **Nature of jurisdiction under Ss. 20—23 of this Act.**

(*a*) Under the Crim. Pro. Code of 1882, the jurisdiction conferred by Ss. 20—23 of Act I of 1871, is a special jurisdiction. 23 C. 300 ; 23 C. 442. **O**

N.B.—As such it is by S. 1 of Crim. Pro. Code unaffected by the provisions of the Code. (*Ibid.*)

(*b*) Although the decisions in 23 C. 300, and 23 C. 442, were correct decisions under the Code of 1882, yet under the Code of 1898, cases under S. 20 of Act I of 1871 come within the ordinary jurisdiction of the Magistracy and should be dealt with accordingly. 34 C. 296 ; 11 C.P.L.R. 10 (Cr.). **P & Q**

N.B.—See also the provisions of the last clause of Sch. II of the Cr.P.C. of 1898.

(2) **Transfer of cases under this section.**

(*a*) S. 192, Cr P.C., 1882, does not authorize the transfer of a case under S. 20 of Act I of 1871. 23 C. 300 and 442. **R & S**

(*b*) (i) Though a complaint under S. 20 of Act I of 1871 must be entertained either by a District Magistrate or a Magistrate specially authorized, such Magistrate has power to transfer the case, after taking cognisance of it, to any subordinate Magistrate as contemplated by the Code. 34 C. 926=6 Cr.L.J. 363. **T**

(ii) Even under the Code of 1872 (*vide* Ss. 44 and 141 of Act X of 1872), it was decided in a case by a majority of the Court (*Thornton, J., doubting*), that a case under S. 20 of the Cattle Trespass Act preferred before a Magistrate may be transferred for disposal to a subordinate Magistrate, as there was nothing in the provisions of the Cattle Trespass Act to exclude the operations of Ss. 44 and 141 of the Criminal Procedure Code (Act X of 1872). 26 P.R. 1897 (Cr.) (F.B.). **U**

(3) **Appeal in cases under this section.**

(*a*) There is no provision for an appeal in a case to which Ss. 20 to 23 of Act I of 1871 apply, which is *quasi* civil, and the jurisdiction was intended to be limited to the Magistrate specially referred to. 23 C. 300. **V**

1.—"Make a complaint to the Magistrate"—(Concluded).

But see the following—

(*b*) As the illegal seizure of cattle is now made an offence (see S. 4, cl. (*a*), Cr.P.C.), it follows that a person against whom an order for compensation under S. 22 of the Act is made, is "a person convicted on a trial," and an appeal against such conviction therefore lies under S. 407 of the Criminal Procedure Code. 29 M. 517=5 Cr.L.J. 86. **W**

(4) **What classes of Magistrates are competent to try cases under this section.**

No Magistrate other than a District Magistrate can exercise jurisdiction under this section, unless specially authorised under Ss. 20 to 23 of this Act. 23 C. 442; 31 C. 350 and 34 C. 926. **X**

(5) **Illegal seizure of cattle—Offence.**

"Offence" includes also any act in respect of which a complaint may be made under S. 20 of Act I of 1871. See S. 4, cl. (*o*) Cr.P.C. and 34 C. 926= 6 Cr.L.J. 363 and 29 M. 517=5 Cr.L.J. 86. **Y**

N.B.—Hence the rulings under 1 Weir 710, 711; 9 M. 102; 13 C. 304; 15 C. 712; 23 C. 248, 442; 11 C.P.L.R. 10 (Cr.); 18 A. 353; 2 C.L.R. 507; 9 M. 374, may now be held to have been superseded. **Z**

(6) **This section no bar to remedy in Civil Court.**

(*a*) The peculiar remedy for the wrongful seizure of cattle and the special limitation provided for it do not exclude the ordinary remedy which a man possesses under the law, and therefore an action for wrongful seizure of cattle will lie in a Civil Court and the provisions of Act I of 1871 are no bar to such a suit for compensation. 16 C. 159 (2 C.L.R. 344, *Diss*; but see 15 W.R. 279 (Cr.) *F.*) **A**

(*b*) Although the Cattle Trespass Act gives a remedy to persons whose cattle have been illegally distrained, it does not prohibit a person, who is unable from any circumstance to take advantage of that remedy from bringing an action for damages in a Civil Court. Under this Act, a person may complain against the seizure within 10 days before a Magistrate; but many things may happen to prevent a person from complaining within that time; and if he fails to do so we do not think that the law intended that he should be deprived of all the remedy for the illegal act of the person carrying off his cattle. 15 W R. 279 (Civil rulings). **B**

(*c*) This section gives merely a summary remedy for recovery of damages and expenses, incurred on account of illegal seizure of cattle. This remedy is cumulative and does not deprive a person of the right he otherwise has to recover damages by a civil suit in a civil Court which has therefore jurisdiction to entertain a suit for damages for illegal seizure of cattle. 92 P.R. 1877 (Civil). **C**

2.—"Authorised to receive and try charges."

"Charges," meaning of.

The word——in S. 20 of the Act is used as equivalent to complaints. 11 C.P.L. R. 10. **D**

N.B.—The somewhat peculiar wording of the section is borrowed from the rules of procedure then in force. (*Ibid.*) **E**

21. The complaint shall be made by the complainant in person, or by an agent personally acquainted with the circumstances [1]. It may be either in writing or verbal [2]. If it be verbal, the substance of it shall be taken down in writing by the Magistrate.

Procedure on complaint.

If the Magistrate, on examining the complainant or his agent, sees reason to believe the complaint to be well founded, he shall summon the person complained against, and make an enquiry into the case [3].

(Notes).

1.—"By the complainant in person....circumstances."

(1) **Person entitled to make a complaint under this section.**

Under this section the person empowered to make a complaint is either the complainant in person or an agent personally acquainted with the circumstances. Therefore, a person, who is not an agent personally acquainted with the circumstances of illegal seizure, cannot institute a complaint under S. 21. 5 Bom. L.R. 205. **F**

(2) **Straying of some animals in a flock—Seizure of all—Legality thereof.**

The mere fact that a person impounded more animals than had actually strayed into his land through the negligence of the drivers or the want of sufficient drivers while they were taken along a road is not a proper ground for treating the seizure of all the animals as illegal. In this case there was no proper material for deciding how many of the animals were illegally seized. 5 Bom. L.R. 205. **G**

2.—"It may be either in writing or verbal."

Stamp unnecessary for a complaint under this section.

Complaints made under this section do not require a stamp. They may be upon plain paper. 8 Bom. H.C.R. (Cr. Ca.) 22. **H**

N.B.—This case was decided under Act III of 1857 and seems to be equally applicable to the present Act.

3.—"And make an enquiry into the case."

(1) **Illegal seizure—Questions of ownership to land—Power of Magistrate to decide.**

If, in a charge of "illegal seizure" of cattle, it is necessary to go into the question as to who was the occupier of the land, a Magistrate is empowered under this chapter to enquire into such a case as the power of granting compensation carries with it the power of deciding if the grounds on which the compensation is asked is good or not. 23 W.R. 2 (Cr.). **I**

N.B.—Such an enquiry should be without prejudice to any one's ultimate rights. (*Ibid.*)

(2) **Right to graze—Seizure of cattle—Complainant entitled to compensation.**

If the complainant has a right to graze cattle on land upon which they were seized and taken to the pound, he is entitled to compensation even if the defendant may be the owner of such land. 23 W.R. 2 (Cr.) **J & K**

Compensation for illegal seizure or detention.

22. If the seizure or detention be adjudged illegal [1], the Magistrate shall award [2] to the complainant, for the loss caused by the seizure or detention, reasonable compensation [3], not exceeding one hundred rupees, to be paid by the person who made the seizure or detained the cattle, together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle,

Release of cattle.

and, if the cattle have not been released, the Magistrate shall, besides awarding such compensation, order their release and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure or detained the cattle.

(Notes).

General.

(1) **Nature of proceedings under this section.**

A proceeding under S. 22 of the Cattle Trespass Act I of 1871 is not a regular criminal proceeding but a *quasi* civil proceeding in which a Magistrate is authorised to assess and enforce in a summary manner compensation for an injury for which a civil action might be brought. 14 C. 175. **L**

(2) **Order against two persons—Joint liability.**

Where compensation is ordered to be paid by two persons without specifying the proportionate amount payable by each, they are jointly and severally liable to pay it. (*Ibid.*) **M**

(3) **Trial under S. 22—No particular procedure.**

Where a person was charged under S. 22 of Act I of 1871 and was tried summarily and sentenced by a First Class Magistrate, the High Court declined to interfere as the defendant had had an adequate trial and Act I of 1871 had not prescribed any particular procedure. 23 C 248. **N**

1.—"If the seizure....illegal."

(1) **Illegal seizure—No causing of wrongful loss under S. 23, I.P.C.**

The illegal seizure and impounding of cattle, even though it was effected with the malicious intent of subjecting the owners of such cattle, to additional expense, inconvenience and annoyance, cannot be held to be "causing a wrongful loss" within the meaning of S. 23 of the Indian Penal Code. 24 W.R. 7. (But see 1 Weir 492 above). **O**

(2) **"Illegal seizure" is different from "theft."**

Where an accused person was found to have loosed the complainant's cattle at night and to have driven them to the pound with the object of sharing with the pound-keeper the fees to be paid for the release, *held* that the accused was not liable under S. 22 of the Cattle Trespass Act, inasmuch as there was no illegal seizure and detention of the cattle and that the accused ought to have been tried for theft. 22 C. 139. **P**

2.—"The Magistrate shall award."

(1) **Power of such Magistrates.**

Jurisdiction is given under this section to the Magistrates, to adjudicate compensation to any person complaining of, and proving such seizure, for the loss caused by the seizure and detention, as well as any fines and expenses incurred by the complainant in procuring the release of the cattle. Court-Fees paid by the complainant may form part of such compensation. 2 C.L.R. 507. **Q**

(2) **Application of S. 250, Cr. P. C. to this section.**

S. 250 of the Cr. P. Code, applies to a case in which compensation is awarded to an accused person, because a frivolous complaint has been made against him. But where compensation is awarded not to the accused but to the complainant under S. 22 of the Cattle Trespass Act I of 1871, S. 250 of the Code does not apply. 29 M. 517=1 Weir 712. **R**

(3) **Order awarding compensation—Appeal.**

(*a*) No appeal lies from an order awarding compensation under S. 22 of the Act for wrongful seizure of cattle. 3 N.W.P.H. C.R. 200; 15 C. 712; 22 P.R. 1886 (Cr.) and Rat. Unrep. Cr. Ca. p. 520 and 1 Weir 711 and 10 B. 230 and 19 M. 238 and 11 M. 359. **S**

N.B.—This is practically overruled by 29 M. 517 for which see S. 20, *supra*. See also below.

(*b*) An appeal lies against an order passed for compensation under the S. 22 of Act I of 1871 for illegal seizure of cattle, as such an order of a Magistrate is a conviction within the meaning of the Code of Criminal Procedure. 4 L.B.R. 10=6 Cr. L.J. 121 and 1 Weir 712. **T & U**

(4) **Default in payment—Order for imprisonment.**

Order for imprisonment in default of payment of compensation awarded under this section is illegal. 1 Weir 712; 19 M. 238; 31 M. 133 and 11 C.P. L.R. 10. See, also, 7 M.H.C.R. App. 22 *overruling* 5 M.H.C.R. App. 21; 2 C.L.R. 507; 22 C. 139 (143). **V**

3.—"Reasonable compensation."

(1) **"Compensation for the loss caused by the seizure and detention," interpretation of.**

The words "Compensation for the loss caused by the seizure and detention" do not necessarily refer only to such special damage as is sustained by the seizure and detention prior to the release of cattle but also include all expenses necessarily incurred by reason of such seizure and detention, though it may be after such release. 7 M. 345=1 Weir 713. **W**

(2) **Court fees to be refunded.**

(*a*) A complainant is entitled to a refund (under S. 31 of the Court Fees Act) of the fee paid on the complaint and the process-fees which he had paid, for S. 22 directs that the Magistrate shall award to the complainant, for the loss caused by the seizure and detention of the cattle, reasonable compensation not exceeding one hundred rupees together with all fines paid and expenses incurred in procuring the release of the cattle; it may include costs incurred for taking out summons also. 4 L.B.R. 11=6 Cr. L.J. 122 and L.B.R. (1872-1892), 515. **X**

3.—"Reasonable....compensation"—(Concluded).

(*b*) Court fees paid by the complainant may form part of such compensation. 2 C.L.R. 507 *contra* 11 C.P.L.R. 10 (Cr.) **Y**

N.B.—For the reasoning by which the above conclusions are arrived at and the judicial interpretation of the words of this section, see below.

(*c*) The language of the section is wide enough to include the Court and process fees necessarily paid on account of the refusal to make compensation or refund the fine paid. 7 M. 345 = 1 Weir 713 and 1 Weir 715. **Z**

(3) **Can compensation only be awarded.**

(*a*) BUT NO PENALTY.

A person was convicted and sentenced under S. 22 of the Cattle Trespass Act and ordered to pay a fine of Rs. 25 of which a sum of Rs. 12 was to go to the complainant as compensation for loss and expenses incurred. It was *held* in these circumstances that the imposition of a penalty in excess of the sum awarded to the complainant as compensation was illegal. The section warrants the award of compensation only and the imposition of a penalty. 36 P.R. 1878 (Cr.); 37 P.R. 1878 (Cr.); 5 P.R. 1880 (Cr.) **A**

(*b*) NO COMPENSATION FOR DAMAGE TO REPUTATION.

(i) This section does not authorize the award of compensation for damage caused to the complainant's reputation by any such illegal seizure of cattle. Nor does this warrant the imposition of a penalty upon the accused in addition to the compensation awarded. 37 P.R. 1878 (Cr.). **B**

(ii) The award of compensation under this section must be by way of reasonable compensation for loss caused by the illegal seizure and detention of cattle and not by way of penalty on the accused or of an award of several damages to the complainant. 25 P.R. 1878 (Cr.) **C**

(*c*) AND NO FINE IN ADDITION.

(i) This section does not provide for a fine in addition to the compensation awarded. 1 Weir 710 = 7 M.H.C.R. App. xxiv. **D**

(ii) Though a Magistrate cannot impose fine under S. 22 but can only award compensation, he is authorized to add to the compensation, fines and expenses paid to the pound-keeper by the owner on releasing the cattle and to be paid by the party who made the seizure. 1 Weir 710. **E**

(*d*) VERBAL IRREGULARITY IN NAMING THE ORDER—EFFECT OF.

Where an order under S. 22 directed that the amount mentioned be paid to the complainant as compensation for the loss and damages incurred by him, and the words with which the decretal part of the judgment began were, namely, "I therefore fine the accused," *held* that latter portion was a mere surplusage and that, although the order was inaccurately worded, the intention to award compensation was clear. 1 Weir 715. **F**

(4) **High Court would decline to consider the sufficiency of the amount allowed.**

Where some compensation was awarded in addition to the sum allowed on account of the fines and "expenses" or other charges incurred in procuring the release of the cattle, *held* that the High Court would not consider the sufficiency or insufficiency of the amount allowed. 1 Weir 715. **G**

Recovery of compensation.

23. The compensation, fines and expenses mentioned in section 22 may be recovered as if they were fines imposed by the Magistrate [1].

(Notes).

1.—"As if they were fines imposed by the Magistrate."

(1) **Scope of section.**

The section only says that compensation levied under S. 22 *supra* may be recovered as if it was a fine imposed by the Magistrate. It does not say that imprisonment may be awarded in default of payment. 22 C. 139; L.B.R. (1872—1892) pp. 429 and 515. **H**

N.B.—In the latter case it was *held* that the provisions of S. 67, I.P.C. did not apply to these cases.

(2) **Compensation not paid—Procedure.**

If compensation awarded by a Magistrate under section 22, *supra* is not paid, he can proceed to recover it under this section as if it was a fine imposed by him. L.B.R. (1872-1892) p. 515. **I & J**

CHAPTER VI.

PENALTIES.

Penalty for forcibly opposing the seizure of cattle or rescuing the same.

24. Whoever forcibly opposes the seizure of cattle [1] liable to be seized [2] under this Act,

and whoever rescues the same after seizure [3], either from a pound or from any person taking or about to take them to a pound [4], such person being near at hand and acting under the powers conferred by this Act,

shall, on conviction before a Magistrate, be punished with imprisonment for a period not exceeding six months, or with fine not exceeding five hundred rupees, or with both.

(Notes).

1.—"Whoever forcibly opposes the seizure of cattle."

(1) **Forcible opposition necessary.**

A Magistrate cannot under S. 13 of Act III of 1857 (S. 24 of the Present Act punish except for an act of forcible opposition to the seizure of cattle-damage feasant. 7 W.R. 155 (Civil rulings). **K**

(2) **Deceit, no forcible opposition.**

If a person is induced by a lie to refrain from seizing the cattle of the accused, he cannot afterwards, on finding out that he was deceived, attempt to seize the cattle if they had meanwhile left the spot trespassed upon. An opposition to such seizure of the cattle is not punishable under S. 24. For the cattle should be "liable to be seized," at the time and place at which they are sought to be seized. 4 P.R. 1891 (Cr.) **L**

(3) **Cattle which have escaped from seizure, "not liable to be seized"—Forcible opposition to seizure of such cattle no offence.**

Opposition to the seizure of cattle which had escaped from a pound wherein they were impounded is not an offence punishable under this section. "For in this case they were not liable to be seized" at the time and place at which they were attempted to be seized. Rat. Unrep. Cr. Cas. p. 294. **M**

2.—"Liable to be seized."

(1) **Rescue of cattle—When amounts to an offence.**

(*a*) A conviction under section 24 of Act I of 1871 can only be supported if the cattle were "liable to be seized" under the Act. If not, their rescue is no offence. 24 M. 318=1 Weir 716. **N**

(*b*) Where the officers of the Public Works Department seized certain cattle and there was no evidence that the land on which the cattle were seized was public property in charge of that department, held that the person rescuing such cattle could not be convicted under S. 24 of the Act. (*Ibid.*) **O**

(2) **Cattle not grazing of themselves, but driven into forest liable to seizure.**

Certain persons forcibly opposed the seizure of their cattle by village officers who found them grazing in a reserved forest. The Magistrate acquitted them on the ground that there was no trespass as the cattle had not gone into the "reserved forest" of themselves, but had been driven into it by the accused. The High Court reversed the order of acquittal, as under S. 67 of Act VII of 1878 and S. 11 of Act I of 1871, the cattle were liable to seizure. Cr. Rg. 22 of 1892. **P**

3.—"And whoever rescues the same after seizure."

(1) **Facts to be proved.**

For the purposes of this section, it is enough to prove the facts of the rescue of the cattle, which had been seized while on their way to the pound. 7 W.R. 155 (Civil rulings). **Q**

(2) **Removing cattle from a pound, to return them to owner.**

A person who removes cattle from a pound with the intention of returning them to the true owner and who does return them to him is equally liable under this section, though he may not be guilty of "theft in a building." 1 Weir 716. **R**

(3) **Summoning of witnesses unnecessary.**

In a case under this section, the fact that the accused did not summon any witnesses, or that no witnesses were summoned even if the defendants had asked the Magistrate to summon them will not make a finding of the Magistrate illegal as under the provisions of the Code of Criminal Procedure a Magistrate need not have summoned them unless he was persuaded that they were likely to give material evidence and that they would not have voluntarily appeared. 10 W.R. (Cr.) 42. **S**

(4) **If act of rescue apparent, finding legal though no evidence.**

If the act of forcible rescue is apparent and clear from the facts of the case, the finding of conviction by a Magistrate is not illegal on the ground that there were no witnesses to prove or disprove the fact of "forcible rescue." 10 W.R. (Cr.) 42. **T**

4.—"Either from a pound or from any person taking or about to take them to the pound."

(1) **Rescue from person deputed to take cattle to the pound.**

S. 11 of the Cattle Trespass Act does not intend that the person who seizes or causes cattle to be seized should take them to the pound in person,

4.—"Either from a pound or from any person taking or about to take them to the pound"—(Concluded).

so as to render a rescue of cattle from a person sent with cattle seized by or by the orders of another person no offence under this section. 12 P.R. 1882 (Cr). **U**

(2) Frivolous and vexatious complaint—Compensation awardable.

Under S. 24 of the Cattle Trespass Act, compensation may be awarded to an accused person, in case a frivolous and vexatious complaint is preferred against him. 1 P.R. 1872 (Cr.). **V**

Recovery of penalty for mischief committed by causing cattle to trespass.

25. Any fine imposed [under the next following section [1] or] for the offence of mischief by causing cattle to trespass on any land may be recovered by sale of all or any of the cattle by which the trespass was committed, whether they were seized in the act of trespassing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed.

(Notes).

1.—"Under the next following section, or."

In S 25, the words above quoted have been newly inserted by S. 7 of Act I of 1891. **W**

Penalty for damage caused to land or crops or public roads by pigs.

26. Any owner or keeper of pigs [1] who, through neglect or otherwise [2], damages or causes or permits to be damaged any land, or any crop or produce of land, or any public road [3], by allowing such pigs to trespass thereon, shall, on conviction before a Magistrate, be punished with fine [4] not exceeding ten rupees.

[The Local Government, by notification in the official Gazette, may from time to time, with respect to any local area specified in the notification, direct [5] that the foregoing portion of this section shall be read as if it had reference to cattle generally, or to cattle of a kind described in the notification, instead of to pigs only, or as if the words "fifty rupees" were substituted for the words "ten rupees," or as if there were both such reference and such substitution.]

[The Local Government may at any time, by notification in the official Gazette, cancel or vary a notification under this section.]

(Notes).

1.—"Any owner or keeper of pigs."

Pigs, not other animals.

S. 26 of the Cattle Trespass Act provides for carelessly allowing pigs to do damage and not for cases of damages caused by animals other than pigs. Rat. Unrep. Cr. C. p. 60. **X**

2.—"Through neglect or otherwise."

(1) **Conviction under S. 26—Prosecution to prove neglect.**

In order to support a conviction under S. 26 of the Cattle Trespass Act, the prosecution must prove that the owner has through neglect or otherwise damaged or caused or permitted to be damaged land by allowing his cattle to trespass thereon and such personal neglect on the part of the owner must be shown affirmatively to exist if it cannot be inferred from the circumstances of the case. Rat. Unrep. Cr. C. p. 867. **Y**

(2) **Intention or knowledge necessary in other cases.**

Where animals other than pigs are carelessly allowed to do damage, an intention on the part of the owner to cause damage or knowledge that damage is likely to be caused must be proved (*vide* ill. (*b*) of 425, I.P.C.) But under S. 26 of this Act, no such intention or knowledge is necessary in the case of pigs. Rat. Unrep. Cr. C. p. 60. **Z**

3.—"Or any public road."

Includes "Railway."

The word "public road" in this section includes also a railway. (*vide* Act IX of 1890, S. 125). **A**

4.—"Shall be punished with fine."

Clear evidence necessary to prove the amount of damage.

A Magistrate in sentencing an accused person under this section to a fine should take into consideration the following facts:—

(*a*) Whether there is clear proof to show that damage had been done to the complainant's land.

(*b*) if any damage is done, whether there is clear evidence to show exactly the amount of damage done. 2 Bom.L.R. 335. **B**

NOTE.—In the the above case, a Magistrate passed a maximum sentence in the absence of any such evidence and the High Court reduced the same. (*Ibid.*) **C**

5.—"The Local Government....direct."

(1) **This para is new.**

In this section this para and the next paragraph have been added by Act I of 1891, S. 8. **D**

(2) **Extension of S. 26 to other places.**

This section shall be read as if it had reference to cattle generally instead of "pigs" only and as if the words "Rs. 50" were substituted for the words "Rs. 10" in the following areas in the Madras Presidency :—

(*a*) Portions of Nilgiri District (*vide* Fort. St. George Gazette of 1897, Part I, p. 1077). **E**

5.—"The Local Government....directs"—(*Concluded*).

(*b*) The Wynaad Taluq, Malabar District (Gazette of 1891, Part I, p. 884 and Gazette of 1898, Part I, p. 171). **F**

(*c*) Kodaikanal (Gazette of 1894, Part I, p. 1224.). **G**

(*d*) Deputy Tahsildar's Division of Yercaud, Salem District (Gazette of 1894, Part I, p. 128). **H**

(*e*) Certain padugais in Salem District (Gazette of 1894, Part I, p. 288). **I**

Penalty on pound-keeper failing to perform duties.

27. Any pound-keeper [1] releasing or purchasing or delivering cattle contrary to the provisions of section 19 or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees.

Such fines may be recovered by deductions from the pound-keeper's salary.

(Notes).

1.—"Any pound-keeper."

(1) **Pound-keeper—Definition of.**

For the definition of the word "pound-keeper." See S. 6, *supra*. **J**

(2) **Person entertained by a Police—Patel is no pound-keeper.**

Where the accused under this section is no pound-keeper himself but a person merely entertained by the Police Patel to look after the impounded cattle and to water and feed them, he cannot be convicted by a Magistrate under this section. 9 Bom. H.C. R. 164. **K**

N. B.—In this case the Police-Patel was an ex-officio Pound-keeper. (*Vide* S. 6, supra.). **L**

Application of fines recovered under section 25 26 or 27.

28. All fines recovered under section 25, section 26 or section 27 may be appropriated in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting Magistrate.

CHAPTER VII.

SUITS FOR COMPENSATION.

Saving of right to sue for compensation.

29. Nothing herein contained prohibits any person whose crops or other produce of land have been damaged by trespass of cattle from suing for compensation in any competent Court.

(Note).

See notes on S. 20, *supra* and also 16 C. 159, 15 W.R. 279 (*a*) and 92 P.R. 1877 (Civ.). **M**

Set-off.

30. Any compensation paid to such person under this Act by order of the convicting Magistrate shall be set-off and deducted from any sum claimed by or awarded to him as compensation in such suit.

CHAPTER VIII.

SUPPLEMENTAL.

Power for Local Government to transfer certain functions to local authority and direct credit of surplus receipts to local funds.

31. The Local Government may, from time to time, by notification in the official Gazette,—

(*a*) transfer to any local authority[1] within any part of the territories under its administration in which this Act is in operation, all or any of the functions of the Local Government or the Magistrate of the District under this Act, within the local area subject to the jurisdiction of the local authority, or

(*b*) direct that the whole or any part of the surplus accruing in any district under section 18 of this Act shall be placed to the credit of such local fund or funds as may be formed for any local area or local areas comprised in that district,

and may, from time to time, by notification in the official Gazette, cancel or vary any notification under this section.

(Notes).

General.

This Chapter (Ch. VIII) has been newly added by Act I of 1891. **N**

1.—"Transfer to any local authority."

Transfer to Municipal commissioner.

(*a*) The control of all cattle pounds within the Municipal limits in the town of Calicut, has been transferred from the District Magistrate to the Municipal Commissioner. (*Vide* Fort. St. George Gazette of 1885, Part I, p. 78). **O**

(*b*) So also the power has been transferred to the Municipality in Cochin. (Gazette of 1886 part I. p. 820). **P**

(*c*) So also in Tellichery and Cannanore (*Vide* Gazette of 1886, Part I, p. 963). **Q**

(*d*) The same power has been conferred on the Cantonment Committees of Pallavaram and Wellington. (*Vide* Gazette of 1895, Part I, p. 851; and that of 1899, Part I, p. 1110, respectively). **R**

SCHEDULE.

(See section 2.)

Number and year.	Title of Act.
III of 1857 . .	An Act relating to trespasses by cattle.
V of 1860 . . .	An Act to amend Act III of 1857 (relating to trespasses by cattle).
XXII of 1861 . .	An Act to amend Act III of 1857 (relating to trespasses by cattle).

THE CATTLE TRESPASS ACT, 1871.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this volume and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S in Brevior Roman denotes the section.

A

Act, Consolidation of Law into—Purpose and intention of Legislature, *C*, **7**.

Date of—having come to force, *E*, **8**.

Places where the—is in force, *F—K*, **8**.

—s repealed by the Act, *O—Q*, **9**.

—s amending the Act and subsequently enacted, *R—S*, **9**.

Conviction under the old—Legality, *V*, **9**.

Cattle Trespass—, III of 1857, S. 18 : Jurisdiction, *Y*, **10**.

Appeal, Cases under Ss. 20—23 of the Act, *V*, *W*, **20**, **21**.

C

Cattle, Servant of a factory, whether empowered to seize—, *C*, **12**.

Grazing—on lands rented from Government without payment of fees, if an offence, *K*, **13**.

Seizure of—, when justifiable, *L*, **13**.

Causing of damage, if necessary to seize—, *M*, **13**.

Permitting—to stray : Liability, *O*, **14**.

Government garden : Trespass by—in the absence of accused, *P*, **14**.

Land trespassed upon not proved to be the property of Public Works Department : Seizure of—by them, if legal, *S*, **14**.

straying in Reserved Forest : Seizure legal, even if no damage is caused, *U*, **15**.

Fines for—impounded under S. 12 do not amount to punishment, *W*, *X*, **16**.

impounded under S. 69 of the Indian Forest Act : Scale of fees, *Y*, **16**.

Cattle impounded : Double rates of fines where leviable, *A—E*, **16**.

impounded : Purchase by a, sub-Inspector of Police, if legal, *I*, **19**.

Preferring complaints for wrongful impounding or illegal detention of—Summary trial, *J—L*, **20**.

Illegal seizure of—, if, an offence under the old Cr. P.C., *M*, **20**.

Illegal seizure of—, if, an offence, *Y*, *Z*, **21**.

straying of some—in a flock : Seizure of all : Legality, *G*, **22**.

Illegal seizure of—Questions of ownership to land : Power of Magistrate to decide, *I*, *J*, **22**.

Right to graze ; seizure of—Complainant entitled to compensation, *K*, **22**.

Illegal seizure of—No causing of wrong under S. 23, I.P.C., *O*, **23**

Cattle—(Concluded).

Illegal seizure of—different from theft, *P*, **23.**

Compensation for illegal seizure of—Powers of Magistrates, *Q*, **24.**

Order awarding compensation for illegal seizure of—Appeal, *S—U*, **24.**

Award of compensation for illegal seizure of—Default in payment: Imprisonment of offender, *V*, **24.**

Seizure of—Opposition to seizure, when, an offence, *K*, **26.**

Seizure of—Deceit, no forcible opposition to seizure, *L*, **26.**

which have escaped from seizure not liable to be seized: Forcible opposition to seizure of such cattle, no offence, *M*, **26.**

Rescuing—Seized, when, amounts to offence, *N*, *O*, **27.**

not grazing of themselves, but driven into forest, liable to seizure, *P*, **27.**

Removing—from a pound, to return them to owner: Liability, *R*, **27.**

Rescuing—Inquiry: Summoning witnesses, if, necessary, *S*, *T*, **27.**

Rescue from person deputed to take—to the pound, *T*, **27.**

Cattle Trespass Act, Persons entitled to act under—, *A*, **12.**

Person having an interest other than that mentioned in—, cannot act under—, *B*, **12.**

Difference between—and S. 425, I.P.C.. *D—J*, **13.**

if, a bar to remedy in Civil Court, *A—C*, **21.**

Cases under—Magistrates competent to try, *X*, **21.**

Extension of—to other places, *E*, *I*, **29**, **30.**

Conviction under—of the Act: Prosecution to prove neglect, *Y*, **29.**

"*Charge*", meaning of—, *D*, *E*, **21.**

Compensation, for illegal seizure of cattle: Nature of proceedings under S. 22, *L*, **23.**

Order for—for illegal seizure against two persons: Joint liability, *M*, **23.**

for seizure of cattle: Trial under S. 22: No particular procedure, *N*, **23.**

Award of—only for illegal seizure of cattle, *A—G*, **25.**

Cattle: Non-payment of—Procedure, *J*, **26.**

awardable for frivolous and vexatious complaint, *U*, **27.**

under S. 21 for trespass by cattle: Person entitled to prefer—, *F*, **22.**

under S. 21: stamp, if necessary for such—, *H*, **22.**

under S. 20 of the Act: Court-fees, when to be refunded, *X—Z*, **24**, **25.**

D

Damage, caused by animals: Clear evidence necessary to prove amount of damage. *B*, *C*, **29.**

caused by Pigs: Liability of owner of pigs, *X*, **29.**

caused by animals other than pigs: Prosecution: Intention or knowledge if necessary, *Z*, **29.**

G

Government, Transfer of functions of Local—and District Magistrates to local authorities, *L—N*, **8.**

Local—, power of, to transfer cases under the Act: Transfer to Municipal commissioner. *O—R*, **31.**

I

India, British—, meaning of, *D*, **8.**
Interpretation, clause: its effect, *Z*, **10.**

J

Jurisdiction, Nature of—under Ss. 20—23 of the Act, *O—R*, **20.**

P

Pound-keeper, definition, *J*, **30.**
Persons entertained by Police: Patel is no—, *K*, *L*, **30.**
Preamble, Nature of, *A*, **7**
Object of, *B*, **7.**

T

Transfer, of cases under S. 20 of the Act, *S—U*, **20.**
Trespass, Use of public road for purposes other than those allowed, is—, *T*, **14.**

THE LAWYER'S COMPANION SERIES.

THE WORKMAN'S BREACHES OF CONTRACT ACT, 1859

(ACT XIII OF 1859)

(WITH THE CASE-LAW THEREON)

BY

T. V. SANJIVA ROW,

FIRST GRADE PLEADER, TRICHINOPOLY.

(AUTHOR OF A "DIGEST OF PRIVY COUNCIL RULINGS,"
THE "CURRENT INDEX OF INDIAN CASES,"
THE "LAWYER'S REFERENCE,"
AND
THE "INDIAN EVIDENCE ACT.")

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THE WORKMAN'S BREACHES OF CONTRACT ACT, 1859.

TABLE OF CASES NOTED IN THIS VOLUME.

			PAGE.
		I. L. R. Allahabad Series.	
2 A 74	...	Uda Begam v. Imam-ud-din ...	3
3 A 744	...	Ram Prasad v. Dirgpal ...	15, 29, 39
11 A 262	...	Queen-Empress v. Indrajit ...	3, 4, 5, 19, 22
14 A 145	...	Kadir Baksh v. Bhawani Prasad ...	4
20 A 124	...	Fazal Husen v. Raj Bahadur ...	21
26 A 342	...	Kamta Prasad v. Sheo Gopal Lal ...	37
		I. L. R. Bombay Series.	
2 B 19	...	Ba Bau Mayacha v. Nagu Shravucha ...	4
7 B 379	...	Empress v. Bhagavan Bhivsan ...	10
10 B 96	...	Queen-Empress v. Mancherji Ka ' Vasji Sha ' purji	10
13 B 50	...	Hammat Lakshman v. Jayarao Narasinha ...	37
16 B 368	...	Queen-Empress v. Rajah ...	5, 14, 19, 29, 30 & 31
19 B 697	...	Kashiba-bin-Narasapa Nikadi v. Shripat Narshin ...	37
23 B 146	...	Sadashiv Vaman Dhamankar v. Trimbak Divakar Karandikar ...	37
28 B 66	...	Abaji Sitaram Modak v. The Trimbak Municipality.	36
28 B 181	...	Dattaram Govindbhai Guzar v. Vinayak Balkrishna Agashe ...	37
33 B 22	...	Emperor v. Dhondu bin Krishna Kamblya ...	21, 22, 26
33 B 25	...	Emperor v. Balu Saluji ...	22
		I. L. R. Calcutta Series.	
11 C 552	...	Sashi Bhusan Dutt v. Hridai Nath Mundle v. Jadu Nath Dutt ...	37
18 C 259	...	Mahamed Arif v. Saraswati Debya ...	37
21 C 262	...	C. W. Griffiths v. Tezia Dosadh ...	31, 35
22 C 545	...	Jugal Kishore Chowdhurain v. Ananda Lal Chowdhuri ...	37
25 C 637	...	Lal Mohan Chowbey v. Hari Charan Das Bairagi...	19, 20
27 C 131	...	Aneram Das Mochi v. Abdul Rahim ...	22, 36
27 C 276	...	Khairunnissa Bibi v. Loke Nath Pal ...	37
30 C 539	...	Mohori Bibee v. Dharmodas Ghose ...	37
35 C 1035	...	Narwanji Prasad Singh v. Lachman Hojam ...	33, 34
35 C 1036 (N)	...	Sen Balak Raup v. Banwari Singh ...	31, 34
36 C 617	...	Cooverjee Bhoja v. Rajendra Nath Mukerjee ...	5
36 C 917	...	Purna Chandra Nandan v. Tarak Nath Chandra ...	5, 7, 18, 19
		I. L. R. Madras Series.	
1 M 280	...	Rowson v. Hanama Mestri ...	18
4 M 234	...	Pollard v. Mothial ...	22
5 M 276	...	Srinivasa Mudali v. Ponnambalam ...	32
7 M 100	...	Gilby v. Subbu Pillai ...	6, 11

I. L. R. Madras Series. -(*Concluded*). PAGE

7 M 131 ...	The Queen v. Tulukanam ...	15, 17, 31
7 M 354 ...	Siddha v. Biligiri ...	20
8 M 294 ...	Kondadu v. Ramudu ...	13
8 M 379 ...	Ramasami v. Kandasami ...	18, 30, 31
10 M 21 ...	Gregory v. Vadakasi Kangani ...	20
11 M 332=1 Weir 672 ...	*In the matter of* Kittu and others ...	18, 33
13 M 351 ...	Caluram v. Chengappa ...	11, 29
16 M 347 ...	Queen-Empress v. Konda ...	20, 24, 33
18 M 415 ...	Krishnasami v. Sundarappayyar ...	37
20 M 235 ...	Queen-Empress v. Kattayan ...	21
20 M 457 ...	Queen-Empress v. Muthayya ...	21
23 M 203=1 Weir 687 ...	Tanji Joghi v. Hall ...	14, 16, 17, 31
24 M 660 ...	King-Emperor v. Takasi Nukayya ...	31, 34
28 M 37 (**F.B.**) ...	*In the matter of* Anusuri Saccy Asi ...	4, 6, 7, 23, 27, 29, 31, 33

Allahabad Weekly Notes.

17 A W N 220 ...	Fazal Husain v. Raj Bahadur ...	21

Bombay High Court Reports.

4 B H C 37 ...	Reg. v. Joma bin Balu ...	32
9 B H C R 171 ...	Reg. v. Jethya valad Vestya ...	13, 29
9 B H C R 321 ...	W. Nicol and Company v. J. S. Castle ...	4

Bombay High Court Criminal Rulings.

B H C Cr Rul No 10 of 1900 ...	Babu v. Maruti ...	25
B H C Cr R 40 of 1892 ...	Queen-Empress v. Namdeo ...	25
B H C Pri Jud 1874 ...	Javji Dadaji v. Munji Javi ...	7

Bombay Law Reporter.

1 Bom L R 523 ...	Queen-Empress v. Bhila Nana Shet ...	7, 10
2 Bom L R 545 ...	Bhau Abaji v. Rama Maruti ...	14
2 Bom L R 801 ...	Chinto Vinayak Kulkarni *In re* ...	10, 29
5 Bom L R 689 ...	Abaji Sitaram Modak v. The Trimbak Municipality ...	36
6 Bom L R 255 ...	Emperor v. Dhondu Krishna Kamblya ...	21, 22, 26, 31
9 Bom L R 209 ...	Ramkrishna Sitaram v. Haji Dawood Ismail ...	27
9 Bom L R 362 ...	Sehambar Ram Tehal *In re* ...	31, 37
10 Bom L R 1126...	Emperor v. Balu Salaji ...	22
12 Bom L R 135 ...	Emperor v. Namdeo Sakharam ...	728

Bengal Law Reports.

3 B L R A Cr 32 ...	*In the matter of* domestic Servants ...	9
3 B L R Ac 426 ...	Hari Ram v. Jitham Ram ...	37
4 B L R Ap 1 ...	Upper Assam Tea Co., v. Thapur ...	11, 29

Calcutta Law Journal.

		PAGE
6 C L J 180	Khetu Dafadar v. Friderick Dixon	10, 18
8 C L J 312	Narsingh Prasad Singh v. The King Emperor	12, 24, 32

Calcutta Law Reports.

8 C L R 254	Muni Chundra v. Hari Ram Ahom	10

Calcutta Weekly Notes.

4 C W N 201	Aneeram Das Mochi v. Abdul Rahim	23, 36
4 C W N 2[illegible]3	*In the matter of* Ram Sarup Bhakat	26
7 C W N 441	Mohori Bibee v. Dharmodass Ghose	37
11 C W N 247	Khoda Buksh v. Moti Lal Johori	24, 35
12 C W N 869	Narsing Prosad Singh v. The King-Emperor	12, 24, 32

Madras High Court Reports.

2 M H C R 322	Chinna Aiyan v. Mahomed Hakruddin Saib	3
2 M H C R 427	C.A.A. Vernede v Abdul Giri Chinna Swami	33
3 M H C R Ap 25	High Court Proceedings, 13th July 1867	18, 30
4 M H C R Ap 64	High Court Proceedings, 9th August 1869	20
4 M H C R Ap 67	High Court Proceedings, 17th August 1869	25
6 M H C R Ap 24	High Court Proceedings, 26th April 1871	13, 31
7 M H C R Ap 1	High Court Proceedings, 5th January 1872	35
7 M H C R Ap 12	High Court Proceedings, 26th November 1872	29
7 M H C R Ap 13	High Court Proceedings, 3rd December 1872	11
7 M H C R Ap 30	High Court Proceedings, 12th December 1873	7, 14, 15, 29

Madras Law Journal.

5 M L J 164	Krishnaswamy v. Sundrappa Aiyar	37

Madras Law Times.

3 M L T 292	Monuswami Buthar v. Srinivasalu Chetty.	24

Punjab Record.

20 P R 1876	The Crown v. Kallu	9
17 P R 1896	Mana Lal v. Nahia	19, 21
11 P R 1898 (Cr)	Queen-Empress v. Chetu	21
11 P R 1902 (Cr)	The Crown v. Muhammad Shaft	4, 12, 38
28 P R 1904 (Cr)	Imam-ud-din v. Hurmaz-Jee	5, 6, 8, 9

Punjab Law Reporter.

3 P L R 281 (**F.B.**)	The Crown v. Muhammad Shaft	4, 6, 12, 38
198 P L R 1905	The Crown v. Gazi	10

Sutherland's Weekly Reporter.

12 W R 26 (Cr)	The Queen v. Soobhoi	9
14 W R 29 (Cr)	Raja Doomeney and Koonjobehari Lall v. Ragunath Dome	9, 30, 37
18 W R 53 (Cr)	Messrs. James Lyall & Co., v. Ram Chunder Bagdee	30, 34, 37

C. P. L. R.

9 C P L R 65	R. B. Mukund Bal Krishna Buty v. Purnia	4

L. R. Indian Appeals.

30 I A 114 (**P.C.**)	Mohori Bibee v. Dormodoss Ghose	37

			PAGE
	Indian Cases.		
1 Ind Cas 378 ...	Emperor v. Dhondu bin Krishna Kamblya	...	21, 22, 26
1 Ind Cas 387 ...	Emperor v. Balu Suluji	...	22
	Upper Burmah Rulings.		
U B R (1897-1901) 313 ...	Nga Po Tin v. Ma Si and Ma Sin	...	
(1902) U B R 3rd Quarter U B C A p. 1 ...	Phool Singh v. Nga San Hla	...	22, 23
U B R (1903) 4th Quarter 3 ...	Asgar Ali v. Swami and King-Emperor	...	18, 29
U B R (1909) 2nd quarter, U B C A p. 1 ...	King-Emperor v. Nga Tun Zan	...	4, 6, 11, 12, 26
	Lower Burmah Rulings.		
2 L B R 163 ...	King-Emperor v. Periasawmy Achari	...	22
2 L B R (1903-1904), 300 ...	V. Karuppanna v. Mada Nadan	...	26
3 L B R 33 (**F.B.**)	King-Emperor v. 1. Ramiah, 2. Kisten, & 3. Kodendapany		6, 9, 11, 12
3 L B R 187 ...	Emperor v. Gooraomoondian	...	12, 15, 29
4 L B R 270 ...	Ramaswamy Pillai v. Amanadar	..	24
	Sind Sadar Court Criminal Rulings.		
Sind Sadar, C Ch R1 20 of 1898...	Imperatrix v. Khio	...	11
Sind Sadar C Cr R 6, dated 15th August 1902 ...	Imperatrix v. Miro	...	26
Sind Sadar C Cr R 10, dated 23rd Oct. 1902 ...	Imperatrix v. Awat	...	14, 35
Sind Sadar C Cr 9 dated 22nd Dec.* 1902	Imperatrix v. Mauledina	..	19
Sind Sadar C Cr R 7 dated 23rd January 1903...	Imperatrix v. Jawan	...	14
Sind Sadar C Cr R 14 (dated) 15th Feb. 1903 ...	Imperatrix v. Khair Mahammad	...	32
Sind Sadar C Cr R 37 (dated) 13th May 1903...	Imperatrix v. Elias	...	32
Sind Sadar C Cr R No. 81 dated 15 Dec. 1903...	Imperatrix v. Jiando	...	33
Sind Sadar C Cr R C 53, dated 28th Oct. 1904	Imperatrix v. Jumo	...	27

* In the body of the page it is written 22nd October 1902.

Ratanlal's Unreported Criminal Cases.

			PAGE
Rat Un Cr C 204...	Queen-Empress v. Amirkhan	...	9
Rat Un Cr C 375...	Queen-Empress v. Babaji	...	32
Rat Un Cr C 380...	Queen-Empress v. Sakharam	...	32
Rat Un Cr C 418 ...	Queen-Empress v. Bahu	...	25, 32
Rat Un Cr C 537 ...	Queen-Empress v. Hamull	...	34
Rat Un Cr Cas 625...	Queen-Empress v. Bhagooji	...	26
Rat Un Cr C 701 ...	Queen-Empress v. Chonia	...	20, 21, 39
Rat Un Cr C 754 ...	Queen-Empress v. Nugappa	...	14, 15
Rat Un Cr C 874 ...	Queen-Empress v. Govind Valad Lakshman	...	33

Criminal Law Journal.

2 Cr L J 149	...	Anusuri Sanyasi, *In the matter of*	... 27
4 Cr L J 200	...	Emperor v. Gooroomoondian	...12, 15, 19. 29
5 Cr L J 66	...	Khoda Buksh v. Moti Lal Johori	... 35
5 Cr L J 337	...	Sehambar Ram Tehal *In re*	... 37
6 Cr L J 191	...	Khetu Dafadar v. Frederick Dixon	... 18
7 Cr L J 359	...	Munuswamy Buthar v. Streenivasalu Chetty	... 24
8 Cr L J 134	...	Narsing Prasad Singh v. The King-Emperor	...12, 22, 24, 32
9 Cr L J 107	...	Pir Bakhsh v. Imam Din	... 30
9 Cr L J 187	...	Narmanji Prasad Singh v. Lachuman Hajum	... 33, 34
9 Cr L J 188	..	Sew Balak Raut v. Bawari Singh	... 31, 34

Weir's Criminal Rulings.

1 Weir 670	...	H. C. Proceedings 29th March 65	... 7, 29
1 Weir 671 (a)	...	Anusoori Sanyasi, *In the case of*	...20. 23, 27, 31 33
1 Weir 672 (673)	...	Queen-Empress v. Konda	... 20, 33
1 Weir 673	...	Takasi Nukaiya. *In the case of*	... 31
1 Weir 675	...	H. C. Proceedings 13th July 1867	... 18, 30
1 Weir 676	...	H. C. Proceedings 23rd Feb. 1876 No 628	... 18, 29
1 Weir 677	...	H. C. Proceedings 11th October 1879 No. 1747	... 18, 23
1 Weir 678	...	Kolanthai Goundan	... 10, 18, 30
1 Weir 679	...	Kandasami Naick, *In the case of*	... 18, 30
1 Weir 680	...	H. C. Proceedings 12th Dec. 1873 No. 2181	... 7, 14, 15, 29
1 Weir 681	...	H. C. Proceedings 9th January 1880 No. 39	...14, 15, 16, 29 38
1 Weir 682	...	Kandappa v. Goundan	... 17
1 Weir 683	...	Thologa Rama & others, *In the case of*	... 13, 16, 29
1 Weir 684	...	Kali, *In the case of*	... 13, 15, 16, 17, 30
1 Weir 685	...	The Queen v. Para Thulukanam	... 14, 15, 17, 31
1 Weir 686	...	Varoda Chetti & 3 others, *In the case of*	... 30, 31, 38
1 Weir 687	...	Veeran & another, *In the case of*	... 16, 17, 31
1 Weir 688	...	Tanji Joghi v. Hall	... 9, 29
1 Weir 689	...	Muthu Pandiya Gurukkal	... 9, 29
1 Weir 690	...	H.C. Progs. 26th Nov. 1872 No. 2028	... 6, 11, 29
1 Weir 691	...	Kalooram Lal, *In the case of*	... 11, 29
1 Weir 692	...	Annamalai *In the case of*	... 12, 13, 38
1 Weir 693	...	Chinnabathudu *In the case of*	. 7, 10, 12, 13, 15
1 Weir 694	...	Mr. Higgins *In the case of*	... 7, 10, 22, 34
1 Weir 695	...	Pollard v. Mothial	... 22

Weir's Criminal Rulings—(*Concluded*). PAGE

1 Weir 696	...	Govinthan & 15 others ...	22, 25
1 Weir 697	.	H.C. Proceedings No. 1810—16th November 1874...	26
1 Weir 698	...	H.C. Progs. 17th August 1869 ...	
1 Weir 699	...	H.C. Proceedings 21st August 1880 No. 1484 ...	25, 33, 36
1 Weir 701	...	H.C. Proceedings 26th April 1871 ...	13, 31
1 Weir 703	...	Kuppan *In the case of* ...	23, 32, 38
1 Weir 704	...	Chikka Putta *In the case of* ...	27, 28
1 Weir 705	...	Matha Goundan *In the case of* ...	28, 29
1 Weir 706	...	Bettay *In the case of* ...	28, 30
1 Weir 707	...	Chouri Muthu *In the case of* ...	31, 32, 35, 37
2 Weir 40	...	Queen Empress v. Kattayan ...	21

English Cases.

13 L J M C 73	...	Eli Ormorad, ex-parte *In re* ...	9
2 Exch 59	...	Riley v. Ward ...	8
22 L J P 87	...	Sharman v. Sanders ...	8
5 Q B D 313	...	Fellows v. Clay ...	3
1 Hare 196	...	Salkeld v. Johnston ...	3
1 Q B (1900), 725	...	Palmer v. Snow ...	10

WORKMAN'S BREACHES OF CONTRACT ACT, 1859.

ACT NO. XIII OF 1859.

An Act to provide for the punishment of breaches of contract by Artificers, Workmen and Labourers in certain cases [1].

Preamble [2].

WHEREAS much loss and inconvenience are sustained by manufacturers, tradesmen [3] and others [4] in the several Presidency-towns of Calcutta, Madras and Bombay and in other places [5], from fraudulent breach of contract [6] on the part of artificers, workmen and labourers who have received money in advance on account of work which they have contracted to perform; and whereas the remedy by suit in the Civil Courts for the recovery of damages is wholly insufficient, and it is just and proper that persons guilty of such fraudulent breach of contract should be subject to punishment, It is enacted as follows :—

(Notes).

1.—"An Act....cases."

(1) **Title of Act—Guide for its construction.**

A reference may be made to the title of an Act in construing its words. 9 W. R. 402 (404, 406) (F.B.) **A**

(2) **Scope of title and preamble.**

The meaning of the title and preamble, and especially of the preamble of a Code, must be understood to overlie the whole Act, giving colour to, and controlling, its provisions, and supplying *pro tanto* the rule for their interpretation. 2 A. 74 (90). **B**

2.—"Preamble."

(1) **Object of preamble.**

The purpose for which a preamble is framed to a statute is to indicate what in general terms was the object of the Legislature in passing the Act, but it may well happen that these general terms will not indicate or cover all the mischief which in the enacting portion of the Act itself are found to be provided for. 11 A. 262 (266). **C**

(2) **Preamble how far a guide.**

The preamble may well be resorted to, for assistance, in the exposition of doubtful words in the enacting clause of the statute. But the enacting clause cannot be carried beyond the preamble if words be found in the former strong enough for the purpose. *Salkeld* v. *Johnston*, 1 Hare 196; 1 Mac. and G. 242 & 2 Exch. 256; also *Fellows* v. *Clay*, 5 Q.B. 313; *referred to* in 2 M.H.C.R. 322. **D**

2.—"*Preamble*"—(*Concluded*).

(3) **Preamble a key.**

"The preamble of the statute is a good means to find out the meaning of the statute and as it were a key to open the understanding thereof." Per *Lord Coke*, 1 Institutes 79 *a*. See, also, 11 Cl. & F. 143; 11 Ch. D. 22; 9 C.P.L.R. 65 (67). E

(4) **Preamble not always discloses all parts of Act.**

The preamble does not always open or disclose all the parts of the Act. *Loft* 783. F

(5) **Language of Act clear—Preamble not to control its operation.**

Where the language of the enacting sections of a statute is clear, the terms of a preamble cannot be called in aid to restrict their operation, or to cut them down. 11 A. 262 (266). G

(6) **Wide preamble will not affect body of Act though less in scope.**

If the preamble provided for a wider mischief than the bill, in its sections, enacts, those sections should not be given a wider scope than their language, properly interpreted, justifies. 14 A. 145 (154). H

(7) **Example of body of Act having larger scope than preamble.**

The preamble of the statutes 4 and 5 Ph. and M. Cap. 8, spoke only of the Act being directed to the abduction of heiresses and of other girls with fortune, yet the body of the Act was applicable to. and made penal, the abduction of all girls under the age of 16 Maxwell's Interpretation of Statutes, p. 58, *cited* in 11 A. 262 (266). I

(8) **Construction beyond scope of Act as indicated by preamble.**

A construction of an Act beyond its object, as stated at length in the preamble, should not be made, unless distinct words to that effect are used in it. 9 B H.C.R. 321 (332). J

(9) **Recital in preamble differing from enacting part of Act.**

The preamble is no part of an enactment and a mere recital in an Act, either of fact or law, is not conclusive, and Courts are at liberty to consider the fact or the law to be different from the statement in the recital. (1 El. & Bl. 501, *R.*). 2 B. 19 (38). K

(10) **Preamble may be consulted if enacting part is open to doubt.**

The preamble may be consulted for the purpose of keeping the effect of the Act within its real scope, when the enacting part is open to doubt. Maxwell on the Interpretation of Statutes, 3rd, Ed., p. 59. Per *Reid, J.* P.L.R. 281 (**F.B.**) = 11 P.R. 1902. L

(11) **This Act is less in scope than preamble.**

The Act fails to deal effectively with the mischief which the preamble recites that it is intended to remedy. Per *Benson, J.* 28 M. 37. M

3.—"*Manufacturers, tradesmen.*"

Scope of the preamble.

The preamble of the Act cannot be construed as limiting the operation of the Act to private manufacturers etc., carrying on business for their private gain. U.B.R. (1909) 2nd Quarter, W B. of C. Act. p. 1. N

4.—"Others."

Construction.

The word 'others' must be construed *ejusdem generis* with the two preceding words. 28 P.R. 1904 (Cr.). **O**

5.—"And in other places."

Construction.

To hold that the words "and in other places" in the preamble refer only to the places at which the loss occurs, and not to the residences or places of business of the manufacturers, tradesmen and others, would be to alter the grammatical construction and punctuation of the preamble, and would leave the fifth section without effect, while to hold that in spite of the power conferred by the fifth section, the first section of the Act applies only to cases in which an advance has been received from an employer or master, residing or carrying on business in one of the places specified therein, would be to leave the fifth section without effect, and the result would be a manifest contradiction of the apparent purpose of the enactment. (Maxwell, pp. 25, 40, 319), per *Reid, J.* 3 L.B.R. 281=11 P.R. 1902. **P**

6.—"Fraudulent breach of contract."

Whether fraud is a condition precedent to enquiry under the Act.

(*a*) The scope of the enacting S. 2 extends to wilful breaches and breaches without lawful and reasonable excuse, although the preamble refers only to fraudulent breaches. 11 A. 262. **Q**

(*b*) The interference of the Magistrate under the Act is limited to cases where the neglect or refusal to perform is wilful and without lawful and reasonable excuse. 16 B. 368; 11 A. 262. **R**

(*c*) "It is true that in this Act the preamble does speak of fraudulent breaches of contract and punishment therefor; but when I come to look into the section which invests a Magistrate with powers under the Act to deal with the persons brought before him, the element he is to look for as going to constitute the offence under S. 2, is the wilful and without lawful and reasonable excuse, neglecting or refusing to perform the contract entered into by the persons whom the Act concerns. There is no mention in that section of the word 'fraudulent' and it is legislating and not interpreting an Act of the Legislature to read that word into the section.

The learned Judges who decided 8 W.R. 69 (Cr.) have interpreted this Act mainly, if not entirely with reference to the language of the preamble, and not in reference to the enacting clauses contained therein, which declare what shall be an offence and what shall be its punishment. Per *Straight, J.* 11 A. 262. **S & T**

(*d*) But in 36 C. 917, it was *held* that a fraudulent breach is a condition precedent to the operation of the Act. The preamble shows that the Act aims at the prevention of fraudulent breaches of contract. Though the preamble is not to be considered as part of the Act, yet the words "shall wilfully and without lawful or reasonable excuse, etc.," in S. 1, are for all practical purposes, equivalent to the expression 'fraudulent breach' in the preamble. 36 C. 917; see, also, 8 W.R. 69 (Cr.). **U**

Complaint to Magistrate if workman neglect to perform work for which he has received advance.

1. When any artificer, workman or labourer [1] shall have received from any master or employer [2] resident [3] or carrying on business [4] in any Presidency-town [5], * * * * or from any person acting on behalf of such master or employer, and advance of money [6] on account of any work [7] which he shall have contracted to perform, or to get performed by any other artificers, workmen or labourers [8], if such artificer, workman or labourer shall wilfully and without lawful or reasonable excuse [9] neglect [10] or refuse to perform or get performed such work according to the terms of his contract, such master or employer or any such person as aforesaid may complain [11] to a Magistrate of Police [12], and the Magistrate shall thereupon issue a summons or a warrant [13], as he shall think proper, for bringing before him such artificer workman or labourer and shall hear and determine the case.

(Notes).

General.

(1) **Object of the Act.**

(*a*) The aim, scope and object of the Act appear, from the preamble and S. 5, to be the repression of the evil. described in the preamble, in all places in which it may be found to prevail. 3 P.L.R. 281 (**F.B.**) = 11 P.R. 1902. **Y**

(*b*) The plain object of the Act is to provide a speedy remedy when the work is not done. Per *Davies, J.* 28 M. 37. **W**

(*c*) The object of the Act was to provide a remedy for fraudulent breaches of contract by workmen, artificers or labourers, who have received advances of money for work they have undertaken to perform, or get performed, such persons being, from want of means, ordinarily unable to make compensation when sued for damages. 7 M. 100 = 1 Weir 690. U.B.R. (1909) 2nd Quarter, W.B.C.A. p. 1. **X**

(*d*) The preamble to the Act which is a statute in *pari materia* shows that the object in introducing the penal provisions of the Act was to help the manufacturers, tradesmen and others in the Presidency towns who suffered much inconvenience from fraudulent breaches of contract on the part of the artificers, workmen and labourers. 28 P.R. 1904, Cr. **Y**

(2) **Scope of the Act.**

A.—Act not applicable to contracts with.

(i) GOVERNMENT.

The preamble to the Act clearly shows that the Act was never intended to apply to or to be for the benefit of the Government under any name or form. Per *Fox, J.* 3 L.B.R. 33 (40).

Contra.—The provisions of the Act are applicable to a contract made with the Government. U.B.R. (1909) 2nd Quarter, W.B.C. Act, p. 1. **Z**

General—(*Concluded*).

ii. THIRD PARTIES.

Third parties though they may have admitted a joint liability for the money advanced, cannot be held liable under the Act. It is only against the contracting party the contract can be enforced. 1 Weir 694. **A**

iii. CO-PARCENER.

No prosecution lies under the Act against the undivided co-parcener of the person contracting, even though the latter may have undertaken to complete the work. 1 Weir 693. **B**

iv. SURETIES.

This Act does not extend to a surety for the artificer, workman or labourer. 1 Bom. L.R. 523. **C**

v. PERSON ENTITLED TO WORK BY CONTRACT AND TO A PERCENTAGE OF PROFITS.

A entered into an agreement with K to work for K as a grinder and polisher of surgical instruments, on a salary of Rs. 30. He was entitled to get the work done by contract. He was also entitled to get a statement of accounts annually, and to receive a certain percentage of the profits, and in the event of the company being wound up, to a percentage of the reserve fund. A left his employment, as, according to him, his employers failed to perform their part of the agreement. *Held* that A was entitled to privileges far above those of an ordinary artificer or labourer and that the Act had no application. 36 C. 917. **D**

(3) **Remedy under the Act is an additional one.**

The Act provides an additional and not a substantial remedy for fraudulent breaches of contract and a Magistrate's order for repayment of the money advanced is not necessary to obtain relief in the Civil Court. B.H.C. Pri. Jud. 1874. **E**

(4) **Construction of the Act.**

(*a*) As the Act is a penal Act, it must be construed strictly and in favour of the subject. Per *Benson, J.* 28 M. 37. **F**

(*b*) A construction of the Act must not be adopted which would enforce a contract in violation of a law of a more stringent nature. 7 M.H.C.R. App. 30 = 1 Weir 680. **G**

(*c*) The Act should be interpreted in such a manner as to give effect to its aim, scope and object. Maxwell, p. 29. **H**

(*d*) This section overrides the whole of the rest of the enactment. 1 Weir 670. **I**

(5) **Care to be exercised in exercising powers under the Act.**

The powers conferred on Magistrates, and the advantages given to employers by this Act can, unless great care is exercised, be used to interfere with the free competition of labour to secure adequate wages. 12 Bom.L.R. 135 (136). **J**

1.—"Artificer, workman or labourer."

(1) **Rules of interpretation of words in a statute.**

(*a*) In dealing with matters relating to the general public, statutes are presumed to use words in their popular sense. Maxwell on Statutes, 3rd Ed., 77. **K**

1.—" Artificer, workman or labourer "—(Continued).

(*b*) The primary principle of judicial construction in interpreting the words of a statute is that the words should be understood in the special meaning given by the statute itself in its defining clauses and if there is none such, they should be understood in the ordinary and popular sense of the word, if not opposed to the context. 28 P.R. 1904 (Cr.). **L**

(2) Words refer to occupations of manual labour.

The words artificer, workmen or labourer, have reference to occupations in which manual labour, *i.e.*, the use of muscles and sinews, is an essential element. 28 P.R. 1904 (Cr.). **M**

(3) Labour may be skilled or unskilled.

The Legislature in taking measures for the protection of the employees who have made advances of money in contemplation of work to be done, adivsedly employed the widest terms to designate the person receiving the advance; in using the words artificer, workman, or labourer, they evidently intended to include labour, as well unskilled as skilled. 8 W.R. 6 (Cr.). **N**

(4) Common cooly labour.

In extending or making it legal to extend the operation of the Act to a region like Assam, where labour would be chiefly agricultural or outdoor labour, the Legislature had in view the common cooly whose services it is necessary there to secure by an advance. Per *Jackson, J.* 8 W. R. 6 (Cr.). **O**

(5) Artificer, meaning of.

(*a*) "Artificer is an intermediate term betwixt the artist and the artisan; manufacturers are artificers, and in an extended sense any one who makes a thing by his contrivance is an artificer." Crabb. Per *Chatterji, J.* 28 P. R. 1904 (Cr). **P**

(*b*) The word 'artificer' connotes a special class of work requiring skill and power of contrivance. The word, taken by itself and also in connection with the context, has reference to the industrial arts and not to the fine arts. 28 P. R. 1904 (Cr.). See, also, 22 L. J. M. C. 73. **Q**

(*c*) The personal exercise of some manual labour, and that of a special kind, is essential to the term 'artificer.' Strouds Judicial Dictionary. Per *Chatterji, J.* 28 P. R. 1904. (Cr.). **R**

(*d*) An artificer means a person who is to have the personal performance of some work for which he is to be paid wages and this must be with reference to the original contract or obligation. Per *Jervis, C. J.* 22 L. J. P. 87. **S**

(6) Workman or labourer, meaning of.

The words 'workman or labourer' are applicable to those persons who strictly contract as labourers, that is, to such as enter into a contract to employ their personal services and to receive for that in wages. Per *Parke* B. 2 Exch. 59. **T**

I.—"Artificer, workman or labourer"—(Continued).

A.—Persons held to be artificers, workmen and labourers within the meaning of the Act.

(1) **Workman in rubber plantation.**

A person who has contracted to work in rubber plantations. Per T. White, C. J. 3 L. B. R. 33. **U**

(2) **Silk-spinner.**

A person, who for a money consideration, has contracted with the manager of a silk factory to work at the Factory for certain months in a year for a certain number of years. 14 W. R. 29 (Cr.).

N.B.—In the judgment, a silk spinner is spoken of as a labourer whose business is to spin silk and who is skilful in that business. **V**

(3) **Partaker in the work.**

Person who, in the ordinary course of business, would himself take part in the work contracted for. Rat. Un. rep. Cr. C. 204. **W**

(4) **Cooly in Assam.**

A—who has received an advance in contemplation of work to be done in a tea garden. 8 W. R. 6 (Cr.). **X**

(5) **Picture copyist.**

One who copies or reproduces pictures by photography or any other process. L. R. 13 L. J. M. C. 73., *cited in* 28 P. R. 1904. **Y**

(6) **Designer.**

A designer who invents and draws patterns to be afterwards engraved on rollers to be used in calico printing. L. R. 13 L. J. M. C. 73. **Z**

B.—Persons held not to be artificers, workmen, or labourers.

(1) **Actor.**

A person who contracts to serve as an—in a theatrical company. In such a case, the work belongs to the department of fine arts, and though some physical effort is required in it, *e. g.*, the use of the vocal muscles in speaking and of the body in motions and gestures in acting, the essential ingredient is intellectual. 28 P.R. 1904 (Cr.). **A**

(2) **Temple servants.**

Persons holding the positions of *stanik* and *othuvar* and entrusted with the jewels belonging to a certain temple and who failed to adorn the god and the goddess at the time of festival with the jewels entrusted to them for that purpose. 1 Weir 689. **B**

(3) **Domestic or personal servants.**

Persons who have contracted to render domestic or personal service. 12 W.R. 26 (Cr.); 3 B.L.R.A. Cr. 32; 20 P.R. 1876. **C**

INSTANCES OF DOMESTIC SERVANTS.

(i) Cook. 1 Weir 689.

(ii) Horsekeeper. 1 Weir 688.

(iii) A clerk who has executed a bond agreeing to work under the complainant. 1 Weir 689. **D**

1.—"Artificer, workman or labourer"—(Continued).

B.—Persons held not to be artificers, workmen, or labourers—(*Continued*).

(4) **Elephant driver.**

One who has entered into a contract to serve the complainant as a mahout or elephant driver. 8 C.L.R. 254. **E**

(5) **Barber.**

See L.R. 1 Q. B. (1900) 725. **F**

(6) **Barber's assistant.**

(*Ibid.*)

N.B.—It was doubted whether a barber's assistant fell within the definition of labourer. **G**

(7) **Picture printer.**

A person who prints portraits or original pictures, even though he works under a contract with a picture dealer. L.R. 13 L.J.M.C, 73. **H**

(8) **Agriculturist.**

A person, who, for money consideration bound himself to render service for agricultural and other purposes. 7 B. 379. **I**

(9) **Third parties.**

See 1 Weir 694, *supra*. **J**

(10) **Surety.**

See 1 Bom. L.R. 523, *supra*. **K**

(11) **Co-parcener.**

See 1 Weir 693, *supra*. **L**

(12) **Coolie Sirdar.**

(i) A—or a recruiter of coolies who only undertakes to produce coolies. 6 C.L.J. 180. **M**

(ii) A person who merely undertakes to supply labour, but does not undertake to be present and see the work done. 1 Weir 678. **N**

(13) **Mere contractor.**

Although the Act applies to artificers, workmen or labourers who contract to employ other men, it does not make a contractor, who is not an artificer, labourer or workmen liable. 198 P. L. R. 1905. **O**

(14) **Sub-contractor.**

A sub-contractor who had engaged to do work but did not himself work is not an artificer, workman or labourer. 10 B. 96. **P**

(15) **Kulkarni.**

A person undertaking as a contractor or as a commission agent to do a work (*viz.*, the cutting of grass and removing the same to Cavalry Depot), even though he was seen, on occasion, taking part in the work contracted for. 2 Bom. L. R. 801. **Q**

(16) **Contracting bricklayer.**

A—who does not himself work. 7 M. 100=1 Weir 690=Cri. Rev. Cas. 322 of 1883. **R**

1.—"Artificer, workman or labourer"—(Concluded).

B.—Persons held not to be artificers, workmen, or labourers—(*Concluded*).

(17) **Carriers.**

(i) CARTMAN.

One who has contracted only to convey wood. 1 Weir 690. **S**

(ii) BOATMAN.

One who has undertaken to convey salt in his boat but did not bind himself to render personal labour in respect of this undertaking. 13 M. 351—1 Weir 691. **T**

(iii) FIREWOOD CARRIER.

One who has undertaken to convey firewood from a forest to the river for a period of some months. Sind. Sadar C. Ch.R. 120 of 1898. **U**

(18) **Suppliers.**

(i) SKIN SUPPLIER.

A butcher who has contracted to supply skins. 7 M. H. C. R. App. 13 = 1 Weir 690. **V**

(ii) WOOD-SUPPLIER.

A person who has contracted to supply woods. 4 B. L. R. App. 1. **W**

(iii) LIME SUPPLIER.

One who has not undertaken to give his personal labour but to supply lime 1 Weir 691. **X**

2.—"Master or employer."

(1) **Government, whether a master or employer.**

(*a*) "The Secretary of State for India in Council, the Government of Indian and each Local Government in India is a master or employer within the meaning of the Act". Per Fox; 3 L. B. R. 33 (38) **F. B.** **Y**

(*b*) The words "any master or employer" in the enacting part of the Statute should not be construed so as to limit them to masters or employers of the classes specified in the preamble. The fact that the Government cannot be considered as a person or entity of the same class as a manufacturer or tradesman does not preclude it from being a master or employer within the meaning of the section. Per White, C. J.; 3 L. B. R. 33, **F. B.** See also 1909 U. B. R. 10 B. 6 A. p. 1. **Z**

(2) **Contractor—Employer of labour.**

Where a contractor for the transport of salt from Ennore to Madras, entered into an agreement with a boat-owner whereby at certain fixed rates, the latter bound himself to convey salt in his boat and received an advance of Rs. 120, in addition to the license tax by the contractor, *held*, that the complainant contractor cannot be termed an employer of labour or the boat-owner a labourer, as he did not bind himself to render personal service. 13 M. 351 = 1 Weir 691; see also 1 Weir 690. **A**

3.—"Resident."

Secretary of State, whether resident in India.

The Secretary of State for India in Council is not resident anywhere in British India and the words are not applicable to a body composed of several officers. Per Fox, 3 L.B.R. 33 F.B. **B**

4.—"Carrying on business."

(1) Business must not be solely for the benefit of others

A person may be said to carry on business only when he is engaged in some trade or commercial business on his own account or jointly with others, with the object of acquiring gain or profit for himself, or for himself and those jointly concerned with him, and not when he does so, solely for the benefit of others, as clerk. Per Fox and Birk, JJ. 3 L.B.R. 33 (39) F.B. **C**

"In conducting the rubber plantations on commercial principles, the Secretary of State is carrying on business for gain, not for his personal gain, but for the pecuniary gain of the state which he represents." Per White, C.J. (*diss.*) 3 L.B.R. 33. **D**

(2) Whether Government carries on business.

The Secretary of State for India in Council or the Government of India or a Local Government of any province of India is not carrying on business in any place to which this Act applies, within the meaning of this section. Per Fox and Birk, JJ. 3 L.B.R. 33.

This view of the law was dissented from by Shaw, J.C., who held in 1909 U.B.R. 2nd Quarter 10 B.C.A. p. 1 that the provisions of the Act are applicable to the Government and the Deputy Conservator of Forests is carrying on forest business on behalf of Government and is competent under this section to prefer a complaint as an employer under the Act. **E**

5.—"In any Presidency town."

Extension of the Act under S. 5

(*a*) When the Act is extended to a certain place under the provisions of S. 5 *infra*, a master or employer residing or carrying on business in the place has the same rights as are conferred by the Act on masters or employers resident or carrying on business in any Presidency town. 12 C.W.N. 869=8 Cr. L.J. 134=8 C.L.J. 312. **F**

(*b*) The Act applies to cases in which money has been advanced by masters or employers, resident or carrying on business in the Punjab and not in one of the places specified in the first section. 3 P.L.R. 281 (**F.B.**)= 11 P.R. 1902 (Cr.). **G**

6.—"Advance of money."

(1) Money advance necessary to create obligation under the Act.

(*a*) An advance of money is an essential preliminary to the creation of an obligation under the Act. 1 Weir 693. **H**

(*b*) Unless it is shown that money has been received in advance from the complainant, no case arises to which the provisions of the Act can become applicable. 1 Weir 692. **I**

(*c*) The Act applies only where there has been a contract for work with money given as wages in advance. 4 Cr. L.J. 200=3 L.B.R. 137. **J**

6.—" Advance of money "—(Continued).

(2) **Advance of grain and money.**

(*a*) WHEN GRAIN WAS OFFERED AND ACCEPTED AS EQUIVALENT TO MONEY.

Where an employer of labour offers the advance in money and the person employed asks to have part of the advance in grain as the equivalent of money, there is sufficient compliance with the requirements of the Act and the advance may in such cases be treated as an advance in money, part of which was in fact exchanged for grain supplied by the employer at the request of the labourer. 8 M. 294=1 Weir 701. **K**

(*b*) WHEN GRAIN WAS NOT ACCEPTED AS EQUIVALENT TO MONEY.

Where the facts of the case do not warrant the inference that there was an actual offer by the employer of money equivalent to the grain accepted in advance, the Court is bound to adhere to a strict interpretation of the Act. (*Ibid.*) **L**

(3) **Paddy may be taken in lieu of money.**

Under the Act there must be an advance of money on account of work which a labourer has contracted to perform and though the labourer might lawfully have consented to take paddy in lieu of money, it is essential that the advance should be on account of the work to be performed. 1 Weir 683. **M**

(4) **Gold given as material to be worked up—Not an advance of money.**

The supply of material with which work is to be done cannot be treated as equivalent to payment of money and the fact that the material was a precious material (gold) can make no difference. 1 Weir 692. **N**

(5) **Coins given to be worked up—Whether an advance.**

So also where coins, (Sovereigns) are given as material to be worked up, there is no advance of money within the meaning of the Act. 1 Weir 693. Compare 6 M.H.C.R. App. 24 *infra.* **O**

Contra.—The circumstances of a sum of money delivered to an artificer being intended for use as raw material, does not operate to render the sum other than an advance within the meaning of the Act. 6 M.H.C.R. App. 24 =1 Weir 701. **P**

(6) **Previous debt is no advance.**

(*a*) PERSONAL DEBT.

(i) Where work was agreed to be done in discharge of a debt due to the complainant, *held* that there was no advance within the meaning of the Act. 1 Weir 684. **Q**

(ii) Where a labourer, in consideration of money due from him on account of previous debts, agreed to serve the complainant and has committed a breach thereof, *held* that he was not liable to be dealt with criminally, because there was no fraudulent breach of contract within the meaning of the section and because no money was received in advance, the consideration for the agreement to serve being an old debt. 9 B. H.C.R. 171. **R**

(*b*) ANCESTRAL DEBT.

Where the accused bound himself to work for the complainant, until the repayment of a sum found due to the complainant on a settlement of

6.—"Advance of money"—(Concluded).

account in respect to certain personal and ancestral debts, *held* that such a contract did not come under the provisions of this Act. 1 Weir. 680 ; see also Sind Sadar C. Cr. Ruling. 135 dated 12th Nov. 1898. **S**

(*c*) MONEY GIVEN AND TAKEN BACK IMMEDIATELY TOWARDS OLD DEBT.

Where the accused who owed a certain sum to the complainant, agreed to work upon the complainant's estate for a certain period, and the complainant handed over the amount to the accused who received it and immediately returned it to the complainant, *held* that there was no advance within the meaning of this section. 1 Weir 685. **T**

(7) **Loan is no advance.**

See 16 B. 368 ; 7 M.H.C.R. App. 30 ; 1 Weir 681 ; Rat. Unrep. Cr. Cas. 754 ; 23 M. 203, *infra*. **U**

(8) **Advance made from time to time.**

It is not within the scope of the Act to include an advance made in respect of a definite portion of clearance work followed by other advances made from time to time over a period of six months, when there is no evidence as to when the work commenced or was given up, or as to the conditions on which the various advances were made, or as to the nature of the employment, or the justification for including charges for accused's messing and for coolies engaged for his donkies. Sind Sadar, C. Cr. 1 of 1903. **V**

(9) **Joint advance to labourers.**

This section deals with advances to individuals, not with cases of advances to several persons jointly. 2 Bom. L.R. 545.

Examples :—

(*a*) The complainant advanced Rs. 199 to three weavers who were brothers, under an agreement whereby they undertook to weave a specified number of Saranjes in 99½ months, making the following stipulation for the repayment of the advance "we will take from you the labour charges in respect thereof, whatever the same may come, and we together will pay Rs. 2 per mensem towards the payment of the said money. We three persons together will pay the said money." *Held* that the weavers could not be proceeded with under S. 1 as the only advance in this case was a joint advance to three persons and it cannot be said that any one of them had received an advance of money. 2 Bom. L.R. 545 ; Sind Sadar C. Cr. R. 10, dated 23rd Oct. 1902 Per Jacob, J.

(*b*) The complainant had obtained a *kabuliyat* jointly executed by 12 of the accused and another executed by the thirteenth accused. The complainant had, from time to time, certified settlement in respect of his claim as against eight of the accused ; but the terms of such settlement were not communicated to the Court.

The complainant purported to hold each person severally liable, but the several accounts did not all correspond with the receipts signed by different parties from time to time or with the terms of the *kabuliyat*. The proceedings pending and proclamations issued under S. 87 Cr.P.C. against the remaining accused were quashed. Sind Sadar C. Cr. R. 7 dated 23rd January 1903. **W**

7.—"*On account of any work.*"

(1) Meaning of.

The expression on account of any work means

(*a*) "In payment of the work." 1 Weir 693.

(*b*) As the price of any portion of the work. 1 Weir 681. **X—Z**

(2) Act not applicable if advance was not on account of work.

Where the advance was paid to the defendant on the condition that he should perform service but not on account of work to be performed, *held* that the contract was not within the purview of this Act. 1 Weir 684. **A**

A.—Advances held to be not on account of work.

(1) Where the advance was on account of loan.

(*a*) Where there was merely a loan which was to enure, so long as the service continued and was then to be renewed in full, the Act has no application. 7 M. 131=1 Weir 685. **B**

(*b*) Where the complainant had advanced money to the accused on the understanding that they would work for him and no one else until they had repaid that money and it appears that the money was given to the accused as a loan and without any reference to the wages or payment for the work performed, which was to be paid for at a certain rate, without any deduction on account of the money he had received, the money received was not an advance made on account of any work contracted to be performed and the contract was nothing more than a loan to which this Act does not apply. 3 A. 744. **C**

(*c*) Where the accused received an advance from the complainant and contracted that he would work for a year under the complainant and would then repay the advance, it was held that the Act does not apply to a contract of this nature and that the contract was a loan with a condition attached that the borrower should work for the complainant. 4 Cr.L.J. 200=3 L.B.R. 187. **D**

(*d*) Where the defendant, in consideration of an advance of Rs. 95 received from complainant who was a cultivator in the Wynad, and bound himself to work for the complainant until the repayment of the amount advanced, it was *held* that the contract is not within the Act. 7 M.H.C.R. App. 30=1 Weir 680. **E**

(*e*) The defendant agreed, in consideration of an advance of Rs. 62, to work as a weaver for 31 months repaying each month Rs. 2 out of the wages he might earn and in case of default of payment, the time of service was extended. For breach of the contract in not repaying the amount, he was directed by the Magistrate to perform the work according to the terms of the contract. *Held* that the contract was not within the Act, as the sum of Rs. 62 was not money advanced on account of work contracted to be performed and that it was a loan to be repaid by monthly instalments of Rs. 2 out of the wages earned during the agreed period of service. Rat. Unrep. Cr. Cas. 754. **F**

(*f*) Where, by a written agreement entered into with the proprietors of a certain estate, a number of workmen agreed to work for a period of

7.—" On account of any work"—(Continued).

A.—Advances held to be not on account of work—(*Continued*).

four years and one month for an initial advance of one rupee each in respect of which it was expressly stipulated that it should not be repaid till after expiration of the agreement, *held* that the sum of the rupee one given on the date of the agreement was not money advanced on account of work to be performed, but rather a loan made without interest on the condition that the defendants would enter into a contract of service for the duration of the loan, namely, four years and one month. 23 M. 203 = 1 Weir 687. **G**

(2) **Where the advance was really a deposit.**

(*a*) A contract made in consideration of what was ostensibly an advance but was in reality a deposit or loan to be refunded at the close of the period of contract is not a contract within the purview of this Act. 1 Weir 681. **H**

(*b*) Where the accused agreed that he and his wife should work for wages of 4 annas a day each, for six years and one month, in consideration of an advance of Rs. 100, which was to be repaid at the close of the period and the wages were to be paid daily from the commencement to the close of the term, it was *held* that the contract, stripped of the advance, is merely an ordinary contract of service and that the advance was not given as required by the Act as an advance of money on account of work to be performed, *i e.*, as the price of any portion of the work to be performed or of the labour to be expended, but simply as a deposit to be refunded at the close of the period and the object of making the advance was simply to shape the transaction to admit of its being dealt with as a contract falling within the Act. *Per Innes, J.* 1 Weir 681.

The sum of Rs. 100 given to the accused was a loan made without interest on the condition that the accused would enter into a contract of service for the duration of the loan. (*Ibid.*) **I**

(3) **Where the advance was made on account of marriage.**

(*a*) Where a loan was made without interest to the defendant for his marriage on the condition that he should perform service, *held* that the money received was not on account of work to be performed. 1 Weir 684. **J**

(*b*) Where the five accused agreed to work for the complainant for 3 years at his *kumri* cultivation at the rate of four annas each *per diem*, the consideration for the agreement being that stated "Besides 55 paras of paddy and Rs. 7—8—0 received from you prior to this date, 30 paras of paddy were received on account of the marriage of one of us and Rs. 5 on account of articles etc." and the agreement contained a clause by which the aforesaid and money was to be deducted from the monthly salary, *held* that the pre-existing debt cannot be regarded as part of the consideration and that the 30 paras of paddy and Rs. 5 in money were a loan on account of the marriage of 4th defendant and the wages to be paid were the remuneration for the labour though complainant had power to deduct the loan for marriage [illegible] 1 Weir 688 **K**

7.—"On account of any work"—(Concluded).

A.—Advances held to be not on account of work—(*Concluded*).

(4) **On account of entering into contract of service.**

(*a*) Where the advance was made to the defendant to induce him to enter into a contract of service, but not on account of work which the defendant contracted to perform, *held* that the contract is not within the Act. 1 Weir 684. **L**

(*b*) Where the accused, a farrier, received from the complainant a sum of Rs. 40, and agreed to work at the complainant's house receiving daily wages for 8 years and to repay annually Rs. 5 out of the money advanced, *held* that the advance was made to induce the defendant to enter into a contract of service, and not on account of work to be performed. 1 Weir 684. **M**

(*c*) Where the defendant, a cooly, received from the complainant, a maistry, Rs. 7½ and agreed to work for nine months and to get 4 annas a day for his wages, and that he was to come for work three months after the contract and that he was to repay the advance on the fulfilment of his contract, it was *held* that the sum of money paid to the defendant was not money advanced on account of work to be performed and that it was a payment made on condition that the defendant would enter into a contract of service for nine months ; and the provisions of the Act are inapplicable. 1 Weir 682. **N**

(5) **For purchase of stamp.**

Where the defendant executed a bond acknowledging the receipt of Rs. 15, part of which was advanced for marriage expenses, part as the price of stamp and so on, and the debtor bound himself to work until the said sum of Rs. 15 with interest at 1 per cent. per mensem was paid off, *held* that the sum of Rs. 15 was not money advanced on account of work. 1 Weir 684. **O**

B.—Advances held to be on account of work.

Advance to be liquidated by performance of work.

Where the advance was made on account of work to be performed and was to be liquidated by performance of the work the Act is applicable. 7 M. 131 = 1 Weir 685. **P**

Instances :—

(*a*) The accused, cobblers, received from the complainant a shoe-maker an advance of Rs. 25 promising to work under him till the sum advanced was worked off by deducting the value of the shoes stitched by them, *held* that the contract was within the purview of the Act. 1 Weir 687. **Q**

(*b*) Where an employer advanced a sum of Rs. 10 to a workman, which was to be repaid out of wages earned, by instalments of one rupee in each month, *held* that the money should be regarded as money advanced on account of work to be performed within the meaning of this section. 23 M. 203 = 1 Weir 687. **R**

(*c*) In consideration that the accused agreed to work for wages, the employer advanced to him Rs. 10 which was to be worked off, 8 annas per week being deducted from the wages which would accrue due, *held* that the provisions of the act were applicable to the contract. 7 M. 131 = 1 Weir 685. **S**

8.—"He shall have....labourers."

(1) Applicability of.

The act does not apply to a person who has not agreed to do any work himself or to cause the coolies to do work when they had been brought to the place of work. 6 C.L.J. 180 (181) = 6 Cr.L.J. 191. **T**

(2) Contracts simply to supply labour—Not within the Act.

A contract by the defendant merely to supply coolies but without any undertaking to be present and see the work done, is not within the purview of the Act. 1 Weir 676; 1 Weir 678; 1 Weir 679 = 8 M. 379; 1 Weir 675 = 3 M.H.C.R. App. 25; 1 Weir 675 = 1 M. 280. **U**

(3) Contract to supply cooly and keep them at work—Within the Act.

Where a contractor agreed to supply coolies and to keep them at work on a plantation, in other words, to get work performed on a plantation for at least three months, it was not merely a contract to supply labourers, but to get labour performed. (*Ibid.*) **Y**

(4) Nature and extent of the work—Not specified, effect.

The circumstances that the nature and extent of the work to be performed are not clearly specified, does not take the case out of the provisions of the Act. 1 M. 280 = 1 Weir 675. **W**

(5) Test to the enforceability of contract under the Act.

The test to be applied to contracts to supply coolies, which it is sought to render punishable under the Act is, whether the defendant who entered into a contract to supply labour, also contracted to work or to get certain work performed. 1 Weir 677. **X**

(6) Contractor must himself be a workman.

The Act applies to cases in which the workman has undertaken to get work performed, as well as to cases in which he undertakes personally to perform it, so that there may be cases in which a contractor is liable to proceedings under the Act. But in such cases the contractor must be himself a workman. 1903 U.B.R, 4th Quarter p. 3. **Y**

9.—"Wilfully....excuse."

(1) Meaning.

The words "shall wilfully and without lawful or reasonable excuse" in this section are, for all practical purposes, equivalent to the expression "fraudulent breach" in the preamble. 36 C. 917. **Z**

(2) Wilful, meaning of.

The word 'wilful' means intentional or deliberate. Generally the word wilful as used in Courts of law, implies nothing blameable but merely that the person at whose action or default the expression is used is a free agent, and that what has been done arises from the spontaneous action of his will. It amounts to nothing more than this, that he knows what he is doing and intends to do what he is doing, and is a free agent. Per *Bowen L.J.* 31 Ch. D. 173, 53 L.T, 837. **A**

(3) Excuse should have reference to circumstances of occurrence of breach.

The expression "without lawful or reasonable excuse" has reference to the circumstances in which the breach occurred. 11 M. 332 = 1 Weir

B

9.—"*Wilful....excuse*"—(*Concluded*).

(4) **Interference of Magistrate, to what cases limited.**

The interference of the Magistrate under the Act is limited to cases where the neglect or refusal to perform is wilful and without lawful and reasonable excuse. 16 B. 368. **C**

(5) **Whether the breach of contract should be fraudulent.**

See 11 A 262, 16 B. 368 and 8 W.R. 69 (Cr) 36 C. 917 noted under preamble, *supra*. **D**

(6) **Proof of wilfulness of the breach necessary.**

In the absence of proof of admission of the terms of the agreement and of the breach thereof, if any, without lawful or reasonable excuse, or of the wilfulness of the breach, even an unqualified admission of liability for a certain sum to the complainant is not sufficient to justify an order under the Act especially when the accused applies at the same time for time for repayment of the amount. Sind. Sad. C. Cr. R. 14 of 1903. **E**

(7) **Reasonable excuse.**

(*a*) DIFFERENCE BETWEEN THE PARTIES AS TO MUTUAL LIABILITIES.

Where a settlement of accounts extending over some months was necessary to ascertain the amount actually due to the complainant, or *vice versa*, which indicates that the question of non-performance arose from differences between the parties as to their mutual liabilities, for the adjudication of which a Civil Court would be the appropriate forum, it was *held* that there was no perverse, wilful or unreasonable refusal or neglect, within the meaning of the section. 2 Bom. L.R. 801 (803.)**F**

(*b*) PLEA OF ILLNESS.

A reasonable plea of illness ought to be enquired into before passing an order under the Act. Sind. Sadar C. Cr. R. 9. dated 22nd Dec. 1902. **G**

10.—"*Neglect.*"

Meaning of.

(*a*) To neglect doing is the omission to do some duty which the party is liable to do. Per *Patteson*, J. 12 A. and E. 468. **H**

(*b*) Negligence is the absence of such care, skill and diligence, as it was the duty of the person to bring to the performance of the work which he is said not to have performed. Per *Willis*, J. 35 L.J.C. 330. **I**

11.—"*May complain.*"

(1) **Jurisdiction.**

Proceedings under the Act may be instituted against a person either

(*a*) In a Court within whose local limits the defendant resides. 17 P.R. 1896, or,

(*b*) In a Court within whose local limits the refusal to perform contract or the breach occurred. (*Ibid.*) or,

(*c*) in a Court within whose local limits the contract was made or the money was advanced. 25 C. 637 ; Sind. Sadar. Court Ruling Cr. 11 of 1902 ; or,

(*d*) in a Court within whose jurisdiction the employer's business office is situated. (*Ibid.*) **J**

11.—"May complain"—(Concluded).

(2) **Contract made in Calcutta—Breach made elsewhere—Jurisdiction.**

The terms of this section do not imply that the complaint is to be made to the Magistrate in the place where the breach of contract has taken place. Therefore, the Presidency Magistrate of Calcutta has jurisdiction to entertain a complaint in respect of a contract made in Calcutta, the breach of which has been committed beyond the local jurisdiction of his Court. 25 C. 637. **K**

(3) **Contract in British Territory to be performed in foreign territory.**

(*a*) The Courts in British India have no power to take cognizance of a complaint of breach of contract to labour at a place out of the limits of British India, though the contract is made or the parties live in British India. 1 Weir 671. **L**

(*b*) V having received an advance of money from G, contracted to labour for him in Travancore territory which is beyond the limits of British India. The defendant was prosecuted under the Act and was ordered to repay the money advanced, and sentenced to imprisonment for default. *Held* that such an order was *ultra vires*. 10 M. 21 = 1 Weir 671. **M**

(4) **Contract in foreign territory—Labour in British territory.**

(*a*) Even in cases where the labour ought to be performed in British territory, Courts have no jurisdiction to make an order under the Act, if the contract was made in foreign territory. 7 M. 354 = 1 Weir 672. **N**

(*b*) B. having contracted in foreign territory to labour for S. in British territory, broke his contract. He was arrested in foreign territory, brought into British territory, prosecuted under the Act and ordered to perform the contract. *Held* that the Court had no jurisdiction. 7 M. 354 = 1 Weir 672. **O**

(5) **Delay in making complaint.**

In cases where there has been great or unexplained delay on the part of the complainant, the Magistrate can use his discretion as to the amount which he may direct to be repaid. 16 M. 347 = 1 Weir 672. **P**

12.—"Magistrate of Police."

(1) **Meaning of.**

The expression "Magistrate of Police" in this section means Presidency Magistrate. 25 C. 637. **Q**

(2) **Other Magistrates should be specially empowered.**

Complaints under this section should be made to a Magistrate of Police in the Presidency towns. But outside the Presidency towns, powers under the Act can only be exercised by Magistrates who have been specially appointed in that behalf. Rat. Unrep. Cr. Cas. 701. **R**

(3) **Magistrates competent to entertain complaints.**

(*a*) In Madras, Act III (Mad.) of 1865 authorizes every Magistrate to take cognizance of offences under the Act. 4 M.H.C.R. App. 64. **S**

(*b*) In Calcutta, a Presidency Magistrate has jurisdiction under this section in respect of a contract made in Calcutta, but the breach of which has [illegible] beyond his local jurisdiction. 25 C. 637. **T**

12.—"Magistrate of police"—(Concluded).

(c) In the Bombay Presidency, Punjab and Sind, all Magistrates of the first class have been authorized to exercise the powers vested by the Act in a Magistrate of Police.

[Notification No. 379, Judicial Department, dated 25th January 1905. Bombay Government Gazette, dated 26th January 1905, Part I, p. 75. Punjab Judicial Circular No. XCII. Sind Official Gazette, dated 2nd Feb. 1905, Part I, p. 183]. **U**

In Bombay, the Notification of the Government of Bombay, dated 22nd January 1862 (Bombay Government Gazette of 1862, p. 140) includes under it such Magistrates only as have been referred to therein as a class and is not prospective. Rat. Unrep. Cr. Cas. 701. **V**

13.—"Magistrate shall.... warrant."

(1) **Duty of Magistrate before issue of process.**

In proceedings under the Act, it is the duty of the Magistrate to enquire into the facts and satisfy himself that a good *prima facie* case is made out before he issues process against any person. 17 P.R. 1896. **W**

(2) **Magistrate cannot refuse to issue process, if reasonable grounds be made out.**

But when any reasonable ground is made out, the Magistrate is bound to put the law into force and cannot refer the complainant to a Civil Court. (*Ibid.*) **X**

(3) **Allegations utterly trivial—Discretion of Magistrate.**

Where the allegations made, though true are utterly trivial, the Magistrate might refuse to issue process. (*Ibid.*) **Y**

(4) **Execution of warrants outside the local jurisdiction.**

A warrant issued by the Court which took cognizance of the complaint may be executed outside the local limits of its jurisdiction. It is hardly likely that the legislature in passing an Act for the protection of employers intended to compel the latter to pursue a workman from district to district as often as he shifted his residence. 17 P.R. 1896 (Cr.). **Z**

(5) **Applicability of S. 83, Cr. P.C.**

The provisions of S. 83 of the Crim. Pro. Code read with S. 5 thereof, apply to a warrant issued under this section, and consequently such warrant may be executed outside the local jurisdiction of the Magistrate issuing the same. 20 M. 235=2 Weir 40; 20 M. 457; 20 A. 124=17 A.W.N. 220; 17 P.R. 1896; 33 P.R. 1898, p. 27; 6 Bom. L.R. 255=33 B. 22=1 Ind. Cas. 378. **A**

(6) **No discretion to Magistrate to refuse to execute warrants.**

A Magistrate has no discretion to decline to execute warrants issued by a Magistrate of another district and forwarded to him for execution under S. 83, Crim. Pro. Code against a person resident in his district. 11 P.R. 1898 (Cr.). **B**

(7) **Arrest without a warrant.**

A breach of contract under the Act is an offence other than an offence for which a Police officer may arrest without a warrant. M.H.C. Pro. No. 436 dated 14th March 1879. **C**

Magistrate may order repayment of advance or performance of contract.

2. If it shall be proved to the satisfaction of the Magistrate [1] that such artificer, workman or labourer has received money [2] in advance from the complainant on account of any work, and has wilfully and without lawful or reasonable excuse neglected or refused to perform or get performed the same according to the terms of his contract, the Magistrate shall, at the option of the complainant [3], either order such artificer, workman or labourer to repay the money advanced [4], or such part thereof as may seem to the Magistrate just and proper [5], or order him to perform, or get performed, such work [6] according to the terms of his contract [7]; and, if such artificer, workman or labourer shall fail to comply with the said order, the Magistrate may sentence him to be imprisoned [8] with hard labour for a term not exceeding three months, or, if the order be for the repayment of a sum of money, for a term not exceeding three months or until such sum of money shall be sooner repaid [9]: Provided that no such order for the repayment of any money shall, while the same remains unsatisfied, deprive the complainant of any civil remedy by action or otherwise which he might have had but for this Act [10].

Penalty if workman fail to comply with order.

(Notes).

1.—"If it shall be proved....Magistrate."

(1) Nature of enquiry—Summary trial.

(*a*) An offence under the Act cannot be tried summarily. 6 Bom. L.R. 255 =33 B. 22=1 Ind. Cas. 378; 10 Bom. L.R. 1126=33 B. 25=1 Ind. Cas. 387=8 Cr. L.J 409; 1897 A.C. 550; 1902 U.B.R., 3rd Quarter W.B.C. A., p. 1; 2 L.B.R. 163; 1 Weir 696, *contra*; 11 A. 262; 1 Weir 694. D

(*b*) The enquiry to be made under this part of the section is an enquiry of a special character which, in some cases, may require to be conducted with much care and patience. 4 M. 234=1 Weir 695. E

(2) Mere admission of liability—Whether sufficient to justify an order without further enquiry.

(*a*) WHERE RATE OF WORK IS CONTESTED.

An order under the Act made without further enquiry, on a mere admission of liability for a certain sum is not justifiable, where there is no admission of the correctness of the measurements given in the complaint and there is a contest as to the rate of work mentioned therein. Sind Sadar C. Cr. R. 2 of 1903. F

1.—"If it shall be proved....Magistrate"—(Concluded).

(*b*) ADMISSION COUPLED WITH A DEMAND FOR TIME FOR REPAYMENT.

In the absence of any proof of the admission of the terms of the agreement or that the breach thereof, if any, was wilful, or without lawful or reasonable excuse, even an unqualified admission that a certain amount is due to the complainant, is not sufficient to justify an order under this section. Sind. Sadar C. Cr. R. 14 of 1903. **G**

(*c*) MERE ADMISSION OF THE CORRECTNESS OF THE AMOUNT—SEVERAL ADVANCES.

When there were several advances, no order can be made under the Act without further enquiry, on the mere admission of the correctness of the amount claimed, in the absence of any evidence as to when the work commenced or was given up, or as to the conditions on which the various advances were made or as to the nature of the employment or the justification for including charges for accused's messing and for coolies engaged for his donkies. Sind. Sadar C. Cr. R. 1 of 1903. **H**

(3) **Trial—Procedure—Applicability of S. 370, Cr.P.C.**

In the trial of a case under the Act, the Magistrate is not bound to frame his record in accordance with the provisions of S. 370 of the Code of Criminal Procedure. It is doubtful whether a proceeding under the first clause of this section and under S. 3, is a criminal proceeding. There is no offence committed and there is no accused. The provisions of the said S. 370, Cr. P.C., are, therefore, inapplicable to a case of this nature. 27 C. 131=4 C.W.N. 201; 1902, U.B.R. 1. **I**

2.—"Received money."

When failure to perform contract amounts to cheating.

Where the accused received an advance from the complainant for the purpose of bringing a number of coolies to the complainant's estate, but failed to do so and also denied that he had ever received the money, *held*, that the accused was neither guilty under this Act nor under S. 406, I.P.C., of criminal breach of trust, but would be guilty of cheating under S. 415, I.P.C. 1 Weir 677. **J**

3.—"At the option of the complainant."

Option of complainant not to be disregarded.

(*a*) Where the Magistrate sentenced the accused to imprisonment, without first ordering the accused, at the option of the complainant, to pay the sum advanced to him or to work, *held* that the order was bad and that the Magistrate should be directed, after giving due notice to both parties, to pass a fresh order according to law. 1 Weir 703=Crim. Rev. C. 108 to 110 of 1897. **K**

(*b*) This section pre-supposes that, at the time when the defaulter is brought before the Magistrate, the complainant has an option either to demand back his advance or to get an order to have the work completed. *Per Benson, J.* 28 M. 37 **(F.B.)**=1 Weir 671 (*a*). **L**

4.—"Repay the money advanced."

(1) Power to order delivery of jewel.

Under this section, a Magistrate has only power to order the repayment of the money advanced or to order the performance of the work. He has no power to order the delivery of a jewel contracted to be made. 3 M.L.T. 292 = 7 Cr. L.J. 359. **M**

(2) Order for re-payment after expiry of time agreed.

(*a*) Under this section, a master or employer can enforce the repayment of the money advanced, by a proceeding under the Act, even after the term of the contract has expired. *Per Stephen, J.* (16 M. 347, *F*; 11 C. W.N. 247, *Diss.*); 12 C.W.N. 869 = 8 Cr. L.J. 134 = 8 C.L.J. 312. **N**

(*b*) The expiration of the term of the contract does not deprive the complainant of his right to exercise his option of asking for the recovery of the money advanced. The option between the two remedies, is that of the complainant and not of the defendant, and the fact that one remedy would be infructuous does not deprive him of the other. The complainant's right to recover the money advanced continues till it is repaid to him, subject to the effect of the Limitation Act. *Per Stephen, J.* 12 C.W.N. 869 = 8 Cr. L.J. 134 = 8 C.L.J. 312. **O**

Contra —(*a*) When the term of a contract coming within the purview of this Act expires the contract, cannot be specifically enforced, nor can the money advanced be recovered, by a proceeding before a Magistrate under the Act. 11 C.W.N. 247 = 5 Cr. L.J. 66. **P**

(*b*) The complainant has the option of repudiating the contract and getting the money back or of keeping to the contract and getting the work done. *Per Holmwood, J.* 12 C.W.N. 869 = 8 Cr. L.J. 134 = 8 C.L.J 312. **Q**

(*c*) The remedies under S. 2 are interlocked and interdependent, and if one has lapsed, the other has lapsed also. *Per Holmwood, J.* 12 C.W.N. 869 = 8 Cr. L.J. 134 = 8 C.L.J. 312. **R**

(*d*) The option being the return of money advanced or the performance of the contract while it is still running, the Magistrate's jurisdiction is gone if the option has become impossible. The complainant must exercise that option within the time the contract is running. (*Ibid.*) **S**

(3) Expiry of the period during the pendency of the case.

On the 7th January, 1907, the respondent agreed in consideration of a money advance, to work for the complainant up to the 8th January, 1908. On 20th December, 1907, the petitioner applied to the Magistrate for a warrant under S. 2, which was issued on the same day, and the case fixed for 30th December when, at the request of the respondent's pleader, the case was adjourned to 7th January, (*i.e.*,) the last day of the period of contract. On the 8th January, the case was dismissed on the ground that no order could be made after the expiry of the term for which the respondent had engaged to work. *Held* that the delay in the disposal of the case did not defeat the petitioner's right to compel the refund of the money advanced. (11 C. W. N. 247, *Diss*). **T**

4.—"*Repay the money advanced*"—(*Concluded*).

(4) **Order for immediate payment of advance.**

An order to repay the advance on the spot, though harsh, is not absolutely illegal, provided the Magistrate passed his order in accordance with the option of the complainant. 1 Weir 699. **U**

(5) **Fixing time for re-payment.**

It is not competent to a Magistrate under this section to fix a time within which the money advanced is to be repaid. Rat. Unrep. Cr. C. 418. **V**

(6) **Order directing payment without specifying any time—Bad for uncertainty.**

An order directing the payment of the sums of money received by the workman in advance, without specifying any time within which those sums were to be paid back, is bad for uncertainty. 1 Weir 696. **W**

(7) **Sum advanced not ascertained—Order for re-payment, bad.**

A, B and C. in consideration of an advance of Rs. 199 received from D agreed to serve as weavers at his house. It was stipulated that A, B, and C, would take from D the usual labour charges according to the usual rate and that they together would repay the amount advanced at the rate of Rs. 2 per mensem in 99½ months, and in case of breach they should pay Rs. 398 to D. A having worked for 3 years, refused to work. *Held* that it was impossible for the Court under this section, if the complainant exercised his option of requiring payment, to order A to repay the money advanced to him, for it was impossible to say how A received, for though A agreed to do a third of the work, it was not alleged that he received as a fact a third of the money. B.H.C. Cr. Rul., No. 10 of 1900. **X**

5.—"*Or such part....proper.*"

(1) **Part performance of contract.**

(*a*) COMPENSATION

The Act does not authorise the award of compensation for part performance of the contract. 1 Weir 698=4 M.H.C.R. App. 67. **Y**

(*b*) ORDER FOR REFUND OF MONEY.

In the terms of this section, there is no provision as to what is to be done in case the contract has been partly performed and partly not performed. It apears to be left to the discretion of the Magistrate to say whether it is 'just and proper' that the whole amount advanced or any and what part thereof ought to be repaid. But such portion of the money advanced as has been appropriated to the fulfilment of the contract as could justly be set-off against a part fulfilment of the contract ought not to be ordered to be refunded. 4 M. H. C. R. App. 67=1 Weir 698. **Z**

(2) **Compensation under S. 560, Cr.P.C.**

Compensation cannot be awarded under S. 560, Crim. Pro. Code, to a person against whom a complaint has been made under the first clause to this section. For, as a neglect or refusal to perform work according to a contract is not made punishable by that clause, a complaint of such neglect or refusal is not a complaint of an offence under Ss. 4 (*p*) and 560, Crim. Pro. Code. B.H.C.Cr.R. 40 of 1892. **A**

5.—"Or such part....proper"—(Concluded).

(3) **Compensation under S. 250, Cr.P.C.**

A mere breach of contract not being an offence under this section, no compensation can be given to the accused under S. 250, Crim. Pro. Code. 4 C.W.N. 253. **B**

(4) **Expenses of suit.**

Where the accused was ordered under this section to pay back to the complainant the amount advanced to the accused and also to pay Rs. 8 as the expenses of the suit, *held* that as no fine was imposed, nor could be imposed under the Act, the portion of the order directing payment of Rs. 8 as the expenses of the suit was illegal. Rat. Unrep. Cr. C. 625. **C**

(5) **Court fee on petition of complaint.**

(*a*) In a proceeding under the Act, where the workman admits the advance and repays the same, it is not open to the Magistrate to make him pay the complainant the Court-fee paid on the complaint. 6 Bom. L. R. 255 = 33 B. 22 = 1 Ind. Cas. 378. **D**

(*b*) Where an accused person who had been ordered, under S. 1 to repay the sum advanced to him, was also ordered under S. 31 of Act VII of 1870 to repay to the complainant the Court-fees paid on his petition of complaint, *held* that the order as to the payment of Court-fees was illegal, as repayment of the Court-fees could only be ordered "in addition to the penalty imposed upon the accused" and no penalty had been imposed, or could be imposed till the accused had disobeyed the order for the payment of the sum advanced to him. Sind Sadar, C. Cr. R. 71, dated 24th June 1898. **E**

(6) **Process-fees.**

In a case of conviction under this section an order for the refund of stamp duty and process-fees ought to be passed. 1 Weir 697, *contra*; Sind Sadar C.Cr.R. 6, dated 15th August 1902. **F**

(7) **Writing fees.**

The charge for—does not come within the provisions of the Act. 1 Weir 697. **G**

(8) **Proceedings under this clause, nature of.**

(*a*) The proceedings of the Magistrate up to and incluslve of the passing by him of an order for either the repayment of the advance or performance of the contract do not constitute a trial for any offence as defined in Crim. Pro. Code, 6 Bom. L.R. 255. **H**

(b) Proceedings under the first clause of this section are not in the nature of a regular case at all, but of miscellaneous proceedings, in which the appropriate order would be one dismissing the complaint. 1909 U.B. R., 2nd Quarter, W.B C.A., p. 1. **I**

(*c*) Proceedings under the first paragraph of this section are criminal proceedings. 2 L B.R. (1903-1904) 300. **J**

(*d*) A prosecution under S. 211, I.P.C., for instituting proceedings without just cause under this section will lie. 2 L.B.R. (1903-1904), 300. **K**

6.—"Or order.... work."

(1) **Magistrate to pass only one order.**

According to the option of the complainant under the section, the Magistrate can pass only one order, either to perform the work or to repay the money. 9 Bom. L.R. 209. **L**

(2) **Alternative order, bad.**

An alternative order, directing the workman either to finish the work or to repay the advance is bad. 9 Bur. L.R. 209. **M**

(3) **Section applicable only, if at the date of complaint, the work is incomplete.**

This section empowers the Magistrate at the option of the complainant, either to order that the money advanced be repaid, or that the work be performed. The section only applies when the work is incomplete when the complaint is made. If the work has been completed when the complaint is made, the Magistrate has no jurisdiction under the section. In such a case the employer's civil remedy is open to him but he cannot avail himself of the penal enactment. *Per* Chief Justice. 28 M. 37 (**F.B.**) =1 Weir 671=2 Cr. L.J. 149. **N**

"It is true this view restricts the scope of the Act in a way for which I can see no reasonable ground, and shows that the Act fails to deal effectively with the mischief which the preamble recites that it is intended to remedy, but, as the Act is a penal Act, it must be construed strictly and in favour of the subject. The strict interpretation of the words of the Act is that stated above. If the Legislature considers that the Act as at present worded does not give effect to the true intention of the Legislature, the remedy is to amend the wording of the Act." *Per* Benson. J. 28 M. 37 (**F.B.**)=1 Weir 671=2 Cr. L.J. 149. **O**

(4) **Work completed through other agency before lodging complaint—Applicability of Act.**

An employer, by doing the work himself or employing a third party to do it for him loses his right to proceed under the section. 1 Weir 670; 1 Weir 671 A=28 M. 37 (**F.B.**)=2 Cr. L J. 149; Sind Sadar. C. Cr. Rul. 9, dated 22nd October 1902. **P**

Contra: It is only where the employer had allowed the workman *with whom he originally contracted* to complete the work, even after the time agreed upon had expired, that no prosecution will lie against them under the Act. Sind. Sadar C. Cr. R. C. 53, dated 28th October 1904.

7.—"According to the terms of his contract."

(1) **Strict compliance with terms necessary.**

A contract within the scope of the Act can only be enforced in strict conformity with its terms. 1 Weir 704. **Q**

(2) **Terms of contract should be ascertained.**

(*a*) In a proceeding under the Act, the first thing to be ascertained is whether the artificer, workman or labourer entered into a valid contract, and if so, has wilfully and without lawful or reasonable excuse neglected or refused to perform work according to the contract. In order that

7.—"According to the terms of his contract"—(Continued).

this may be ascertained, it is quite clear that the terms and circumstances of the contract must be accurately ascertained. 12 Bom. L. R. 135. **R**

(*b*) Thus where the workman contracts that he will work as a weaver for a certain time and produce a certain number of woven cloths and the period of service fixed by the contract extends over so many as eight or six years for the paltry sum of Rs. 99 or so given by the employer as advance and the consideration is so grossly inadequate as to suggest that the so called advance was merely a device for bringing the contract within the Act and the contract also provides for payment of wages according to custom and it is not definitely proved what wages the employee is to receive in what form and at what times he is to receive them or how the advance is to be repaid and it was not ascertained the weaver refused to go on working, the High Court set aside the order of the Magistrate convicting the accused under the Act. 12 Bom. L.R. 135 (136). **S**

(3) **Time is essence of the contract.**

(*a*) WORK IN STIPULATED PERIOD IS NECESSARY.

(i) Where time is of the essence of the contract, it is not competent to the Magistrate to direct the defendant to do work for any period other than the specified period fixed by the contract. 1 Weir 705; Sind. Sadar Court Cr. Rul. 16 dated 19th February 1903. **T**

(ii) Thus where the defendant agreed with the complainant to work with four coolies on the complainant's plantation estate for ten months from June of one year to March in the next year (1884) and on default being made, the Magistrate ordered the defendant with the four coolies for ten months from the date of his order, *held* that as the agreement to do work was not for any ten months, but for a specific season, the order of the Magistrate should be confined to directing the accused to work for the residue of the period originally contracted for, remaining after the date of his order, *i.e.*, from the date of the order to March 1884. 1 Weir 704; 1 Weir 705. **U**

(*b*) ORDER TO WORK AFTER EXPIRY OF STIPULATED PERIOD.

Where the defendant contracted to do plantation work for a year, such year to commence at or within a reasonable time after the date of the contract, which was three years before the date of the order requiring the defendant to do work for a year, the order was held to be illegal since the time contracted for had expired. 1 Weir 706. **V**

(*c*) SOMETHING EQUIVALENT TO WORK AGREED OUGHT NOT TO BE ORDERED.

(i) A Magistrate has no liberty to compel a person to do something else as an equivalent for what he agreed to do. 1 Weir 705. **W**

(ii) The contract in this case was a contract to do general plantation work for a specific term from a specific date. If a man did work for the same term, but from a totally different date, he would perform the contract, but doing something else in lieu of what he agreed to do. 1 Weir 705. **X**

7.—"According to the terms of his contract"—(Continued).

(4) **Time is not essence of the contract.**

WORK MAY BE DONE IN A REASONABLE TIME.

(i) Where the essential part of the agreement is that a certain specific article shall be made within a reasonable time, the time is fixed merely as a guide to what would be a reasonable period. 1 Weir 705. **Y**

(ii) Thus where a carpenter agreed to build, in a month's time, a bandy out of materials to be supplied to him, it was *held* that the time in this case is not of the essence of the contract. 1 Weir 705. **Z**

(5) **Contracts not within the scope of the Act.**

(*a*) A contract by a person who is not himself an artificer, workman or labourer. 1903 U.B.R., 4th Quarter, p. 3. **A**

(*b*) A contract by a person who undertook simply to work as a contractor or a commission agent, although he was seen, on occasion, taking part in the work contracted for. 2 Bom. L.R. 801. **B**

(*c*) A contract in which the agreed work was completed at the date of complaint. 1 Weir 670 ; 28 M. 37 (**F.B.**). **C**

(*d*) A contract wherein an advance has not only been worked off by the defendant, but an actual balance is due to him. 8 W.R. 69 (Cr.). **D**

(*e*) A contract by which the defendant bound himself to work for the complainant until the repayment of the amount advanced. 1 Weir 680=7 M.H.C.R. App. 30 ; 4 Cr. L.J. 200=3 L.B.R. 187. **E**

(*f*) An agreement to work in consideration of old debt due by the defendant to the complainant and where no money was received in advance. 9 B.H.C.R. 171 ; 16 B. 368 ; 17 P.R. 1890 (Cr). **F**

(*g*) An agreement by which the defendant agreed to work for the complainant and for no other persons and the money was advanced to him by way of loan and without any reference to the wages or payment for the work which was to be paid for at a certain rate without any deduction of money received in advance. 3 A. 744 ; 16 B. 368. **G**

(*h*) A contract made in consideration of what was ostensibly an advance, but was in reality a deposit or loan to be refunded at the close of the period of contract. 1 Weir 681 (*ibid.*) 682 ; (*ibid.*) 683. **H**

(*i*) A contract by which the defendant undertook to supply goods to the complainant but did not undertake to give his personal labour. 1 Weir, 691. **I**

(*j*) An agreement by a contractor to supply wood to the the complainant. 4 B.L.R. App. 1. **J**

(*k*) A contract by a butcher to supply skin. 7 M.H.C. R. App. 12—Weir 690. **K**

(*l*) A contract to supply lime. 1 Weir 691. **L**

(*m*) A contract to serve as a temple servant. 1 Weir 689. **M**

(*n*) A contract to serve as a domestic servant. 1 Weir 688 ; 689. **N**

(*o*) An agreement entered into by the defendant with the plaintiff by which the former pledged himself to convey salt in his boat but did not bind himself to render personal labour in respect of this undertaking. 13 M. 351=1 Weir 691. **O**

(*p*) A contract merely to supply coolies. 1 Weir 676. **P**

7.—"According to the terms of his contract"—(Continued).

(*q*) A contract in which an advance was made to the defendant to induce him to enter into a contract of service but not on account of work to be performed. 1 Weir 684 = Cr. Rev. Cas. 442 of 1891; Cr. Rev. 237 of 1895. **Q**

(*r*) An agreement by a village lambardar owning a cart, which he worked through his son or a servant and not personally, to cart certain bricks but not by personal labour, was *held* not to fall within the purview of this section, as such lambardar would not be a workman or labourer within the section. 28 P.R. 1908 (Cr.) = 9 Cr. L.J. 107. **R**

(*s*) A contract whereby the accused a ryot entered into a written agreement with the complainant in consideration of an advance to supply 40 coolies to work on the complainant's estate, getting the work done by his own maistry and not binding himself to work. 1 Weir 678. **S**

(*t*) A contract to pay the balance that was found due by the defendant to his employer the complainant, when the latter settled his claim and accepted a promise for the payment of the balance due, there being no claim subsisting which can be enforced under the Act. Sind. Sadar C. Cr. Rul. 81, dated 15th Dec. 1903. **T**

(6) **Contracts enforceable under the Act.**

(*a*) A contract by which the defendant, in consideration of an advance of Rs. 6, agreed to work as an agricultural labourer for a limited period of one year. 1 Weir 706 = Cr. Rev. Case 960 of 1883. **U**

(*b*) A contract by which the defendant agreed to do or get done within a given time a specific work. 1 Weir 686. **V**

(*c*) A contract whereby the defendant agreed to get performed three weeks plantation work with a certain number of coolies. 3 M.H.C.R. App. 25 = 1 Weir 675. **W**

(*d*) A contract to weave a certain number of cloths at a certain rate per mensem from materials and machinery, etc., provided by the employer. 1 Weir 686. **X**

(*e*) A contract, in consideration of an advance of money, to collect coolies, to take them to the complainant's coffee estate, to get work done by them on the estate for a certain period, to get their accounts settled so as to leave no arrear outstanding against them and in case the contract is not fulfilled, to make compensation for any loss which the complainant may sustain and to undergo the punishment prescribed by this Act and in repayment of the said advance, himself to repair to the coffee estate and to work on it as a cooly for five years and to get his accounts settled at the end of the fifth year. 8 M. 379 = 1 Weir 679. **Y**

(*f*) A contract extending over several years where there was nothing unreasonable or contrary to public policy. 16 B. 368. **Z**

(*g*) A contract wherein the accused a silk spinner agreed with the manager of a silk factory to receive wages at the rate of 5 rupees a month and these wages were to be given for 4 months in the year during which period alone the business was to be carried on and the contract was to last for three years and the accused contracted to attend and work every day during the manufacturing season. 14 W. R. 29 (Cr.); but

7.—"According to the terms of his contract"—(Concluded).

(*h*) A contract to work for an additional number of days after the expiry of the period for the completion of the contract in case of default. 1 Weir 707. **B**

(*i*) A contract by which the defendant cobblers, in consideration of a money advance, agreed to work under the complainant, a shoe-maker till the sum was worked off by the value of the shoes stitched by them. 1 Weir 687. **C**

(*j*) A contract wherein the complainant, in consideration of the accused agreeing to work for wages in tannery advanced to him Rs. 10 which was to be worked off by allowing the defendant to deduct 8 annas a week from his weekly wages. 7 M. 131=1 Weir 685 ; see also 23 M. 203. **D**

(*k*) A contract to supply a certain number of loads of firewood. M.H.C. Pro., 18th January 1884. **E**

(*l*) A covenant to serve as a carrier during the covenantor's whole lifetime is good in law. 2 M. and W. 273, *cited in* 1 Weir 686. **F**

(*m*) A contract to get labour performed, containing covenants to pay penalties in default of supplying the labourers, and to repay the advance, if necessary, by personal labour for five years. 8 M. 379=1 Weir 679. **G**

(*n*) A contract under which the accused took from the applicants Rs. 170 in advance under a written agreement whereby he agreed, in consideration of the loan, to work at the latter's factory as a shoe-maker for 3 years. 9 Bom. L.R. 362. **H**

8.—"If such artificer....imprisoned."

(1) **Mere breach of contract is no offence.**

As a rule, a mere breach of contract ought not to be an offence, but only to be the subject of a civil action. A man cannot be treated as a criminal for not performing a contract which could not be enforced against him by Civil process. 16 B. 368. **I**

(2) **What constitutes offence under the Act.**

DISOBEDIENCE TO THE MAGISTRATE'S ORDER.

(*a*) The offence created by the Act is not the neglect or refusal of the workman to perform his contract but the failure of the workman to comply with an order made by the Magistrate that the workman should repay the money advanced or perform the contract. 28 M. 37=1 Weir 671-A ; 24 M. 660=1 Weir 673. **J**

(*b*) The punishment under the Act is for the disobedience of the Magistrate's order and not for fraudulent breach. 6 Bom. L.R. 255. **K**

(3) **Interval is necessary for obeying Magistrate's order.**

This section clearly implies that, after the order is passed for repayment under the first part thereof, an interval should occur in order to see whether the defendant should comply with it or not. 35 C. 1036 (N)=9 Cr. L.J. 188 ; 21 C. 262 ; Sind Sadar C. Cr. R. 120 of 1908. **L**

(4) **Punishment when no opportunity given is illegal.**

(*a*) The imposition of punishment without any opportunity being given to obey the Magistrate's order is illegal, inasmuch as no offence was committed at the time of the passing of the order. (*Ibid.*) **M**

(*b*) The imprisonment should not be announced beforehand but can only be awarded on complaint of non-compliance and after hearing any defence the accused may have to make. 6 M.H.C.R. App. 24=1 Weir 701. **N**

8.—"If such artificer....imprisoned"—(Continued).

(5) **Simultaneous order, bad.**

(*a*) An order of a Magistrate, passed under this section "that the prisoner should work for a certain period, and in case he failed to do so should suffer rigorous imprisonment for one month," annulled as to the latter part, the Magistrate having no power to make that order until the failure had occurred and been proved before him. 4 B.H.C. 37; Rat. Unrep. Cr. Cas. 375; (*Ibid.*) 380. **O**

(*b*) Where a Magistrate ordered a person, who had made default in fulfilling his contract to work, to work from the date of the order to a certain date, and, in case of default during that period, to work for an extra number of days for such default, *held* that it was not competent for the Magistrate to make the order in anticipation of default which the accused may or may not commit. 1 Weir 707. **P**

(6) **Order without notice to the accused.**

The accused agreed to work for 5 years, receiving an advance of Rs. 15 and getting nothing more in the way of wages than his food. He worked for 18 months and then left working, because his son was beaten by the complainant. The Magistrate passed an order directing the accused to work for the remaining period ithout giving him an opportunity of proving his defence. *Held* that the accused was entitled to have an opportunity of proving his defence and that the contract was a harsh one. 1 Weir 703. **Q**

(7) **Defendant's statement of his inability to work immaterial.**

Where an order has been made by a Magistrate for the fulfilment of a labour contract, a sentence of imprisonment for disobeying such order without complaint made, and without taking statements from the accused, is illegal, although the accused, before the order was made, may have stated their inability to perform the work stipulated for. 5 M. 376. **R**

(8) **Fixing time for repayment of advance.**

A person ordered to do certain work cannot be said to have failed to comply with the order until he has had time given to him to perform the work, but liability under an order for repayment of the sum advanced attaches at once, and the Magistrate is then entitled on application of the complainant or of his own motion to adopt any lawful compulsory process for realisation of the amount. A Magistrate however should exercise his discretion in such cases and is not bound to go on issuing a series of warrants without further application from the complainant. Sind Sadar C. Cr. Rul. 37, dated 13th May 1903. See, also, Rat. Unrep. Cr. Cas. 418. **S**

(9) **Application for issue of warrant for payment.**

But any such further application, if made, may be taken into consideration and should be regarded as a continuation of the original proceeding in which the order for re-payment was made. It should not be recorded as a separate independent case. Sind. Sadar. C. Cr. Rul. 14, dated 15th Feb. 1903. **T**

(10) **No imprisonment after expiry of contract.**

Imprisonment is imposed as the punishment for refusing either to work or to repay, but no fine or imprisonment is provided as a punishment after the contract has been broken and expired. 12 C.W.N. 869 = 3 Cr.L.J. [illegible] **U**

8.—"If such artificer....Imprisoned"—(Concluded).

(11) **Period of imprisonment exceeding period of contract.**

Where the period of imprisonment imposed under this section exceeds the period for which the accused is under a contract to work, and where no interval is granted for the order to be complied with, such order is illegal. 35 C. 1035=9 Cr.L.J. 187. **Y**

9.—"Or until such sum....repaid."

Form of order.

Where an order for re-payment of money advanced has not been complied with, the Magistrate in sentencing the accused to imprisonment for a certain term under the section should also add the words "or until the amount ordered to be re-paid be sooner repaid." 1 Weir 699. **W**

10.—"No such order....Act."

Imprisonment, no bar to Civil remedy.

The Act was passed for the purpose of punishing fraudulent breaches of contract, and imprisonment under this section is the punishment provided for non-compliance with the Magistrate's order, directing either re-payment of the money advanced, or performance of the contract. In the former case, the Magistrate's order remains unsatisfied within the meaning of the proviso, if the money has not been re-paid at the end of the term of imprisonment so as to deprive plaintiff of his remedy by a Civil suit. 2 M.H.C.R. 427. See also 11 M. 332; 28 M. 37=1 Weir 671 (a)=6 Cr. L.J. 149 (**F.B.**). **X**

Miscellaneous.

(1) **Limitation Act, effect of.**

(*a*) This Act is a penal enactment, and the Act of Limitation is no bar to the enforcement of a penal provision. Though it was passed because the remedy by suit was insufficient, it is no ground for saying that the Act ceases to be applicable when the civil remedy is barred. A plea of limitation which is available only in civil suits cannot be taken to bar punishment for what is an offence. 11 M. 332=1 Weir 672; 16 M. 347; 28 M. 37=1 Weir 671 (a) (**F. B.**). **Y**

(*b*) The fact that the term for which the contract between the parties has been made has expired affords no reason why the Magistrate should not adopt the alternative course and direct the accused to re-pay the money advanced on such part thereof as may seem to the Magistrate just. The mere fact that the money could not be recovered by action is no sufficient ground for refusing altogether to give effect to the penal provision of the Act. 16 M. 347=1 Weir 672. **Z**

Contra.

Where a bond containing an agreement to work for 13 months as weavers or in default to pay back Rs. 100 borrowed, cannot be enforced in Civil Court being time-barred, it cannot be made the basis of a prosecution under the Act. Rat. Unrep. Cr. Cas. 874. **A**

(2) **Original claim settled—Promise to pay balance.**

When the claim which an employer has against his workman is settled, and a promise to pay the balance due was accepted by the employer, no claim subsists which can be enforced under the Act. An order for payment of the balance so promised cannot be made under the Act. Sind. Sadar. C. Cr. R. No. 81, dated 15th Dec. 1903. **B**

Miscellaneous—(*Continued*).

(3) **Re-consideration of order.**

When the Magistrate has made an order in the first stage of a proceeding under S. 2 for the re-payment to the complainant of the money advanced by him to an artificer, workman or labourer, it must always be open to him to consider, at the further stage of the proceeding, when it becomes necessary for him to inflict a penalty under the section, for failure to comply with the order, whether the order was legal and justifiable. Rat. Unrep. Cr. Cas. 537. **C**

(4) **Appeal.**

An order adjudging the re-payment of money advanced is appealable, although no penal sentence has yet been passed on a default of compliance with such order. 1 Weir 694. **D**

(5) **Revision under S. 439, Cr.P.C.**

(*a*) The High Court declined to exercise their extraordinary powers of revision in a case in which the joint Magistrate dismissed a complaint of breach of contract under this Act on the ground that that Act did not apply to a contract to work at a certain factory. 18 W.R. 53, (Cr.). **D1**

(*b*) The order passed under the second clause of this section concurrently with an order under the first portion of the section is within the jurisdiction of the High Court to deal with.—*Per Woodroffe*, J. 35 C. 1036, Note, 9 Cr. L.J. 188. **E**

(*c*) So also the Sind Sadar Court has power to deal, under S. 439, with cases under the Act. Sind Sadar. C. Cr. R. 11, dated 27th August 1902. **F**

(6) **Contract upheld against weight of evidence.**

On the District Magistrate referring to the circumstances that the contract was upheld in spite of the evidence against it, *held* that it was unnecessary to say the point—*Per stephen*, J.

That the contract was illegally upheld and that circumstance also occasioned a serious miscarriage of justice. *Per Holmwood*, J.35 C. 1035=9 Cr. L. J. 187. **G**

(7) **Withdrawal of complaint.**

(*a*) LEGALITY.

It is open to the complainant under this Act to withdraw his complaint, 24 M 660. **H**

(*b*) WITHDRAWAL BEFORE ORDER—NO OFFENCE.

Where the complainant withdrew the case before the Magistrate had made any order, there had been no offence and there was nothing to acquit him of. 24 M. 660. **I**

(8) **Transfer.**

(*a*) SIND SADAR COURT, POWER OF.

Cases under the Act may be transferred by Sind Sadar Court under S. 526 Cr. P. C. Sind Sadar C. Cr. R. 11, dated 27th August 1902. **J**

(*b*) COURTS TO WHICH THE CASES TO BE TRANSFERRED:

The Act being framed for the benefit of the employer, cases under the Act will not ordinarily be transferred to the Court of a Magistrate having jurisdiction at the place where the work was performed solely for the con- [illegible] (*Ibid*.) **K**

Miscellaneous—(*Concluded*).

(9) **Submission of calender—Practice.**

In cases falling under the Act the calendar should be submitted to the appellate Court immediately an order under the first part of the section is passed. When further proceedings under the latter part of this section are taken, a simple copy of the order containing a reference to the calender should be sent. 7 M.H.C.R. App. 1. **L**

(10) **Several contracts—Procedure.**

Where the contracts are several, each defendant should be proceeded agains separately. An order directing all the defendants to perform thei contract jointly is bad. 1 Weir 707. **M**

(11) **Autrefois convict.**

A person who has once been convicted for a breach of contract under this section cannot again be convicted on the same contract for a further breach for not returning to service. 21 C. 262. **N**

There is no power given by this Act as by the English Statute (4 George IV Cap. 34, S. 3) to discharge a person from liability under the contract, so as to show that unless such order be passed the contract can still be enforced. It is not the intention of the Legislature that a continuous labourer under contract should be liable to imprisonment for several terms for several breaches so as to end in his imprisonment until the term of his contract has expired. This might be the consequence of a persistent refusal to perform a contract for labour for a specific term. 21 C. 262, (264, 265). **O**

(12) **Successive complaints, dismissal of—Effect.**

(*a*) When successive complaints against a workman were dismissed, any remedy the complainant might have had under the Act was barred. 11 C.W.N. 247=5 Cr. L.J. 66. But see the next case. **P**

(*b*) A Magistrate having made an order for repayment of money advanced to several persons jointly, his successor subsequently refused an order of imprisonment in default of such payment on the ground that the case did not come within the Act. *Held* that the Magistrate was not precluded by any principle of *res judicata* or estoppel arising out of his predecessor's order refusing to issue penal process which he deemed to be illegal. Sind Sadar C. Cr. R. 10, dated 23rd Oct. 1902. **Q**

Magistrate may require workman to give security for due performance of order.

3. When the Magistrate shall order any artificer, workman or labourer to perform or get performed any work according to the terms of his contract, he may also at the request of the complainant require such artificer, workman or labourer to enter into a recognizance with sufficient security for the due performance of the order [1]; and, in default of his entering into such recognizance or furnishing such security to the satisfaction of the Magistrate, may sentence him to be imprisoned with hard labour for a period not exceeding three months.

(Notes).

1.—"Require such....order."

(1) **Order for bail for repayment of money advanced illegal.**

(*a*) This section refers only to finding bail for compliance with an order directing an artificer, workman or labourer to perform or caused to be performed the work for which he has contracted. An order, therefore, directing a workman to enter into recognizance for the payment of the money advanced is illegal. 1 Weir 699. **R**

(*b*) A Magistrate ordered repayment of the money advanced within 20 days and directed the accused to furnish security for the payment of the money and to suffer one month's rigorous imprisonment in default for furnishing such security. *Held* that the order was bad and that the Act does not authorise such directions. Sind Sadar C. Cr. R. 13 of 1897 (*ibid.*) 5, dated 5th Sep. 1902. **S**

(2) **Requiring bond under S. 388 (2), Cr.P.C.—Legal.**

A Magistrate ordering a payment to be made under this section may at the same time require a bond to be entered into under S. 388 (2), Crim. Pro. Code. Sind Sadar C. Cr. Rul. 6 dated 15th August 1902. **T**

(3) **Breach of contract denied—Order for recognizance Legal.**

An indentured workman left his employer to work for another. On preferring a complaint under S. 1 *supra*, an order was made under the first part of S. 2 and under this section the Magistrate directed the workman to execute a recognizance. *Held* that the order was right as the petitioner did not deny that he had broken the contract or that he is a workman, to whom this act applied. 27 C. 131=4 C.W.N. 201. **U**

To what contracts Act extends.

4. The word "contract," as used in this Act, shall extend to all contracts and agreements [1] whether by deed, or written or verbal, and whether such contract be for a term certain [2], or for a specific work, or otherwise.

(Notes).

1.—"Contracts and agreements."

(1) **Difference between.**

An agreement enforceable by law is a contract [S. 2 (h) of Act IX of 1872, Contract Act.] **V**

(2) **Agreement.**

(*a*) DEFINITION :—

Every promise and every set of promise forming the consideration for each other is an agreement. S. 2 (*e*) Act IX of 1872. **W**

(*b*) CONSIDERATION NOT ESSENTIAL TO AGREEMENT.

The word "agreement" refers both to a promise and a set of promises, forming the consideration for each other and consideration, therefore, is not an essential element of an agreement. 28 B. 66=5 Bom.L.R. 689. **X**

(*c*) VOID AGREEMENT.

An agreement not enforceable by law is said to be void. [See S. 2 (g) Act IX **Y**

1.—" Conracts and agreements "—(Concluded).

(3) **Contract.**

(*a*) NATURE OF CONTRACT.

A contract may be valid or void or voidable.

(*b*) VALID CONTRACT, WHAT IS A.

All agreements are valid contracts if they are made by the free consent of parties competent to contract for a lawful consideration and with a lawful object and are not expressly declared to be void. See S. 10 of Act IX of 1872. **Z**

(*c*) VOIDABLE CONTRACT, WHAT IS.

An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract. [S. 2 (i) Act IX of 1872]. **A**

(*d*) CONTRACT, WHEN BECOMES VOID.

A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. S. 2 (j) Act IX of 1872. **B**

(4) **Agreement by minors void.**

Formerly, the current of the Indian decisions was to the effect that a contract by a minor was not void, but only voidable (3 B.L.R. Ac. 426 11 C. 552; 3 W.R. 10; 18 M. 415—5 M.L.J. 164; U.B.R. (1897—1901) 313; 18 C. 259 27 C. 276; 13 B. 50; 19 B. 697, 23 B. 146; See however, 22 C. 545). But now, on the view that agreements are contracts only if made by parties competent to contract and that a minor is not a person so competent, the Privy Council has decisively ruled that an agreement by a minor is entirely void. 7 C.W.N. 441=30 C. 539=30 I I. 114 (**P.C.**) See also 26 A. 342 and 28 B. 181. **C**

2.—" For a term certain."

(1) **Intermittent contract for three years—not unreasonable.**

A contract entered into by a labourer with the manager of a silk factory for a money consideration to work at the factory for four months in a year for a period of three years is not an unreasonable contract. 14 W.R. 29 (Cr.) See 118 W.R. 53 (Cr.) **D**

(2) **Contract to work continuously for three years—not unreasonable.**

The accused took from the complainant Rs. 170 in advance under a written agreement, whereby he agreed, in consideration of the loan, to work at the latter's factory as a shoemaker for three years. The Magistrate discharged the accused on the ground that the contract was not for work to be done, but was in order to bind the accused down to work for a period of three years. *Held*, setting aside the order of discharge, that the terms of the contract were clear and brought it within the purview of the Act. 9 Bom. L.R. 362=5 Cr. L.J. 337. **E**

(3) **Contract to work for a specific period—in case of default, to work for a further period.**

Defendant contracted to work from 4th June 1884 to the 30th April 1885 and in case of default during the period specified, to continue to work for as many days after the 30th April 1885 as he should have made default in respect thereof. *Held*, that the contract to work for an additional number of days after the 30th April 1885 in case of default was one which could not be enforced under the Act. 1 Weir 707. **F**

2.—"For a term certain"—(Concluded).

(4) **Contracts extending over a long period.**

The Act does not contemplate cases involving a contract of service extending over a long period in circumstances which would probably leave the contractor at the close indebted to the employer and necessitate to re-engage himself for a further period, a result which would practically countenance a kind of slavery. 1 Weir 686. **G**

(5) **Contract to work for an indefinite term.**

A contract to serve in a particular business for an indefinite term, or even for life, is not necessarily or *ipso facto* void on any ground of public policy and such a contract can be enforced and penalty inflicted under this Act. *Per Brands*, J. 1 Weir 686. **H**

(6) **Contract containing no definite terms as to the execution of the work.**

Where the accused engaged to cut a channel and received advance in money and grains, but the contract did not contain any definite term in accordance with which the work was to be executed, held that there was no contract for the breach of which the accused would be liable under the Act. 1 Weir 692. **I**

(7) **Harsh contract—Discretion of Magistrate to enforce.**

A Magistrate cannot properly decline to exercise jurisdiction under the Act for the reason that the contract is a harsh one. The Act does not give any discretion with reference to the terms of the contract, even if it be harsh. All that the Magistrate can do in dealing with such a contract is to take the terms into consideration in framing the order against the defendant. 1 Weir 703 = Cr. Rev. Cas. 122 of 1898. **J**

Act may be extended by Government.

5. This Act may be extended by the Governor-General of India in Council, or by the Executive Government of any Presidency or place, [1] to any place within the limits of their respective jurisdictions. In the event of this Act being so extended, the powers hereby vested in a Magistrate of Police shall be exercised by such officer or officers as shall be specially appointed by Government to exercise such powers.

(Notes).

General.

(1) **Object of the section.**

The object of section 5 is not merely to enable employers, resident or carrying on business in places specified in S. 1, to prosecute, at other places, persons who have received advances, but to extend all the provisions of the Act to other places and to confer a remedy on employers, resident or carrying on business in such other places. 3 P.L.R. 281 (**F.B.**) = 11 P.R. 1902 (Cr.) **K**

(2) **Effect of the section.**

The effect of the section is to interpolate into S. 1 of the Act the name of any

I.—"Act may.... place."

Notification extending the Act.

(*a*) Madras Presidency, see judicial notification, dated August 23rd 1859 ; Fort St George Gazette 1859 p. 321 : Madras list of Local Rules and Orders Ed. 1894 p. 7. **M**

(*b*) Bombay Presidency, see Bombay Government Gazette, 1860 p. 594. **N**

——————— Bombay Government Gazette, dated, 8th September, 1859 Vol. II, p. 269. **O**

——————— Bombay Government, Gazette, dated, 4th December, 1873, p. 1000. **P**

(i) The Act is extended to all the Collectorates of the Bombay Presidency by Notification of the Government of Bombay, dated 10th May 1860. 7 B. 379. **Q**

(ii) The Notification of the Bombay Government (Bom. Gaz. 1862 p. 140. includes only such Magistrates as have been referred to therein as a class and is not prospective. Rat. Unrep. Cr. Cas. 701. **R**

(*c*) Bengal Presidency see, Bengal Government Notification dated, 2nd January 1863. **S**

Bombay——————— dated, 16th May 1864, Calcutta Gazette, p. 1008. **T**

———————, Home Department Notification No. 408, dated 14th March 1876. Assam Gazette 1876, Part, I, p. 211 ; Assam List of Local Rules and Orders Ed. 1893, Parts IV and V. **U**

———————, Calcutta Gazette 1863, p. 24 : Notification, dated 22nd January 1863. **V**

———————, Notification under S. 3 (*a*) of the Schedule Districts Act XIV of 1874 ; see Gazette of India 22nd October, 1881, Part I, p. 747. **W**

———————, Calcutta Gazette 1862, p. 2980. **X**

———————, Notification dated, 16th August 1859, see Calcutta Gazette 1859, p. 1954. **Y**

(*d*) Punjab, see Notification, dated 13th July 1859. **Z**

(*e*) N.W.P. and Oudh, See N.W.P. and Oudh list of Local Rules and Orders Ed. 1894, p. 14. See also 3 A. 744 as to whether the city of Mirzapur is comprised within the "station" of Mirzapur. **A**

(*f*) Burma, see Notification, dated, 30th December. 1865, G. G. **B**

——————— 13th July 1861 ; see Calcutta Gazette, 1861, p. 2341. **C**

———————14th October 1861 ; see Calcutta Gazette, 1861, p. 319. **D**

———————25th January 1864, see Calcutta Gazette, 1864, p. 45. **E**

(*g*) Coorg, see Gazette of India, Part I, p. 747. **F**

THE WORKMAN'S BREACHES OF CONTRACT ACT, 1859.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this volume and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S in Brevier Roman denotes the section.

A

Act, Object of the, *V—Y*, **6**.

Scope of the, *Z—D*, **6**, **7**.

Applicability of Act, *T—Y*, **18**.

Contracts not within the scope of the, *A—T*, **29**, **30**.

Contracts enforceable under the, *U—H*, **30**, **31**.

Contracts unforceable under the, *U—R*, **30**, **31**.

Notifications extending the, *M—F*, **39**.

Act V of 1898 (Crim. Pro. Code), S. 83—Applicability, *A*, **21**.

S. 250—Compensation under, *B*, **26**.

S. 370—Applicability of, *I*, **23**.

S. 388 (2)—Requiring bond under, *T*, **36**.

S. 439—Revision of order passed under Act, *E—F*, **34**.

S. 560—Compensation under, *A*, **25**.

Actor, Whether an artificer, etc., *A*, **9**.

Admission, of correctness of amount—Necessity of further enquiry, *H*, **22**.

of liability—Whether sufficient to justify order without further enquiry, *F—H*, **22**, **23**.

Admission of liability, Coupled with a demand for time for payment, *G*, **23**.

if sufficient where rate of work is contested, *F*, **22**.

Advance, Money, necessary to create obligation under the Act, *H—J*, **12**.

of grain and money, *K—L*, **13**.

of paddy in lieu of money, *M*, **13**.

Gold given as material to be worked up, *N*, **13**.

Coins given to be worked up, *O—P*, **13**.

Previous debt is no, *Q—T*, **13**, **14**.

Loan is no, *U*. **14**.

made from time to time. *V*, **14**.

Joint, to labourers examples, *W—K*, **14**.

not on account of work,—Whether Act is applicable, *A*, **15**.

on account of loan, *B—G*, **15**, **16**.

held to be not account of work, *B—O*, **15—17**.

Where, was really a deposit, *H—I*, **16**.

Advance—(Concluded).
On account of marriage, *J—K*, **16.**
On account of entering into contract of service, *L—N*, **17.**
for purchase of stamp, *O*, **17.**
to be liquidated by performance of work, *P—S*, **17.**
Held to be on account of work, *P—S*, **17.**
Advance of money, See ADVANCE, MONEY.
Agreement, Difference between contract and, *V*, **36.**
Definition, *W*, **36.**
Consideration not necessary, *X*, **36.**
Agriculturist, whether an artificer, etc., *I*, **10.**
Ancestral debt, whether an advance, *S*, **14.**
Appeal, against order for re-payment, *D*, **34.**
Applicability, of Act if work be completed at date of complaint, *N—P*, **27.**
Arrest, without warrant, *C*, **21.**
Artificers, Meaning of, *P—S*, **8.**
Persons held to be, etc., within the meaning of Act, *U—Z*, **9.**
Persons held not to be, *A—X*, **9—11.**
Assam cooly, Whether an artificer, etc., *X*, **9.**
Autrefois convict, Whether applicable to orders under the Act, *N—O*. **35.**

B

Bail, Order for, for repayment illegal, *R—S*, **36.**
Barber, Whether an artificer, etc., *F*, **10.**
Barber's assistant, Whether an artificer, etc., *G*, **10.**
Bond, Requiring, under S. 388 (2) Cr.P.C.—Legality, *T*, **36.**
Breach of contract, Whether fraud is a condition precedent to enquiry under the Act, *Q—U*, **5.**
mere, is no offence, *I*, **31.**
denied—Order for recognizance legal, *U*, **36.**
Bricklayer, whether an artificer, etc., *R*, **11.**
British territory, Contract in, to be performed in foreign territory, *L*, *M*, **20.**
Labour in, —Contract in foreign territory, *N*, *O*, **20.**
Business, See CARRYING ON BUSINESS.

C

Calendar, Submission of,—Practice, *L*, **35.**
Carriers, Cartman, *S*, **11.**
Whether artificers etc., *S—U*, **11.**
Boatman, *T*, **11.**
Firewood carrier, *U*, **11.**
Carrying on business, Business must not be solely for the benefit of others, *C*, *D*, **12.**
Whether Government is, *E*, **12.**
Cheating, when failure to perform contract amounts to, *J*, **23.**
Civil remedy, Imprisonment no bar to, *X*, **33.**
Claim settled, Original,—Promise to pay balance—Applicability of Act, *B*, **33.**
[illegible] to be worked - Whether an advance, *O*, *P*, **13.**

Coolie sirdar, whether an artificer etc., *M*, *N*, **10.**
Cooly labour, Common, *O*, **8.**
Compensation, for part performance of contract, *Y*, **25.**
under S. 560, Cr. P. C., *B*, **26.**
under S. 250, Cr. P.C. *B*, **26.**
Complainant, Option of, not to be disregarded, *K*, *L*, **23.**
Complaint, Jurisdiction, *J—O*, **19**, **20.**
Delay in making, *P*, **20.**
Magistrates competent to entertain complaint, *R—V*, **20**, **21.**
Withdrawal of, *H*, *I*, **34.**
Dismissal of successive,—Effect, *P*, *Q*, **35.**
Construction, Title of Act—Guide for its, *A*, **3.**
Beyond scope of Act, *J*, **4.**
of the Act, *F—I*, **7.**
Continuous contract, for 3 years not unreasonable, *E*, **37.**
Contract, upheld against weight of evidence, *G*, **34.**
Difference between, and agreement, *V*, **36.**
When becomes void, *B*, **37.**
Intermittent, for 3 years, *D*, **37.**
to work for a specific period—in case of default to work for a further period, *F*, **37.**
Valid, what is a, *Z*, **37.**
Nature of, *Z—B*, **37.**
extending over a long period, *G*, **38.**
to work for an indefinite term, *H*, **38.**
containing no definite terms as to the execution of the work, *I*, **38.**
Harsh,—Discretion of Magistrate, *J*, **38.**
Contractor, whether an artificer, *O*, **10.**
must himself be a workman, *Y*, **18.**
Contracts, Act not applicable to, with Government, *Z*, **6.**
Act not applicable to, with third parties, *A*, **7.**
Act not applicable to, with co-parcener, *B*, **7.**
Act not applicable to, with sureties, *C*, **7.**
Act not applicable to, with sharer in profits, *D*, **7.**
when time is essence of, *T—X*, **28.**
not within the scope of the Act, *A—T*, **29**, **30.**
when time is not essence of, *Y*, *Z*, **29.**
Several—Procedure, *M*, **35.**
To what, Act extends, S. 4, *V—J*, **36—38.**
Co-parcener, act not applicable to contracts with, *B*, **7.**
Not subject to prosecution under the Act, *L*, **10.**
Court-fee, on petition of complaint—Order as to payment of, *D—F*, **26.**

D

Debt, personal, whether an advance, *Q*, *R*, **14.**
Is no advance, *Q—T*, **13**, **14.**
Ancestral, whether an advance, *S*, **14.**

Delay, in making complaint, *P*, **20**.

Deposit, where advance was really a, *H*, *I*, **16**.

Designer, whether an artificer, etc., *Z*, **9**.

Dismissal, of successive complaints—Effect, *P*, *Q*, **35**.

Domestic servant, whether an artificer, etc., *C*, *D*, **9**.
Instances, *D*, **9**.

E

Elephant driver, whether an artificer, etc., *E*, **10**.

Employer, whether a contractor an, of labour, *A*, **11**.
See MASTER.

Enquiry, Nature of,—Summary trial, *D*, *E*, **22**.
If necessary when liability is admitted, *F*, *H*, **22—23**.

Evidence, Contract upheld against weight of, *G*, **34**.

Execution of warrant, No discretion to Magistrate to refuse, *B*, **21**.
Outside local jurisdiction, *Z—A*, **21**.

Expenses, of suit, *C*, **26**.

Extension, of Act, *F—G*, **12**.

Extension of Act, Objects of, S. 5, *K*, **38**.
Effect of, S. 5, *L*, **38**.
By Government, S. 5, *K—F*, **38**, **39**.
Notifications with regards to, *M—F*, **39**.

F

Form, of order, *W*, **33**.

Foreign territory, Contract in British territory to be performed in, *L—M*, **20**.
Contract in,—Labour in British territory, *N—O*, **20**.

Fraud, Whether, is a condition precedent to enquiry under the Act, *Q—U*, **5**.

Fraudulent, Breach of contract, *Q—U*, **5**.

Further enquiry, if necessary for an order where liability is admitted, *F*, *H*, **22**, **23**.
See ENQUIRY.

G

Gold, Given as material to be worked up—Not an advance, *N*, **13**.

Government, Act not applicable to contracts with, *Z*, **6**.
Act may be extended by S. 5, *K—F*, **38**, **39**.

Grain, Offered and accepted as equivalent to money, *K*, **13**.
Advance of, and money, *K*, *L*, **13**.
not accepted as equivalent to money, *L*, **13**.

I

Illness, Plea of, whether reasonable excuse, *G*, **19**.

Inability to work, Defendant's statement of his, immaterial, *R*, **32**.

Imprisonment, No, after expiry of contract, *U*, **32**.
Period of, exceeding period of contract, *V*, **33**.
no bar to civil remedy, *X*, **33**.

Intermittent contract, for 3 years not unreasonable, *D*, **37**.

Interpretation, Rules of, of words in Statute, *K*, *L*, **7**, **8**.

[illegible] is necessary for obeying Magistrate's order, *L—N*, **31**.

J

Jewel, Power to order delivery of, *M*, **24**.
Joint advance, not within the Act—Examples, *W—X*, **14**.
Jurisdiction, of proceedings under the Act, *J—O*, **19**, **20**.
Magistrates competent to entertain complaint, *R—V*, **20**, **21**.
Execution of warrant outside local, *Z*, *A*, **21**.

K

Kulkarni, whether an artificer, etc., *Q*, **10**.

L

Labour, Artificer, etc., refer to occupations of manual, *M*, **8**.
may be skilled or unskilled, *N*, **8**.
Labourers, Meaning of, *T*, **8**.
Persons held to be, etc., under the Act, *U—Z*, **9**.
Persons held not to be, *A—X*. **9—11**.
Lawful excuse, meaning, *Z—E*, **18**, **19**.
Limitation Act, Effect of, on enforceability of contract under the Act, *Y—A*, **33**.
Loan, is no advance, *U*, **14**.
Where advance was account of, *B—G*, **15**, **16**.

M

Magistrates, Competent to entertain complaints, *R—V*, **20**, **21**.
Magistrate of Police, Meaning of, *Q*, **20**.
Other Magistrates should be specially empowered, *R*, **20**.
Manufacturers, Whether Act is limited to private, *N*, **4**.
Marriage, Where advance was on account of, *J—K*, **16**.
Master or employer, Government whether a, *Y*, *Z*, **11**.
Minors, Agreement by, void, *C*, **37**.
Money, Advance necessary to create obligation under the Act, *H—J*, **12**.
grain offered and accepted as equivalent to, *K*, **13**.
Advance of grain and, *K—L*, **13**.
Grain offered but not accepted as equivalent to money, *L*, **13**.
Paddy taken in lieu of, *M*, **13**.
Given and taken back immediately towards old debt, *T*, **14**

N

Neglect, Meaning of, *H—I*, **19**.
Notice, Order without, to accused, *Q*, **32**.
Notifications, extending the Act, *M—F*, **39**.

O

Offence, mere breach of contract is no, *I*, **31**.
what constitutes, under the Act, *J—K*, **31**.
Old debt, whether an advance, *Q*, *R*, **13**; *T*, **14**.
On account of work, Act not applicable if advance was not, *A*, **15**.
Meaning of, *Y*, *Z*, **15**.
Advances held to be not, *B—O*, **15—17**.
Advances held to be, *P—S*, **17**.
Option, of complainant not to be disregarded, *K*, *L*, **23**.

Order, Magistrate to pass only one, *L*, **27.**
Alternative, bad, *M*, **27.**
Simultaneous, bad, *O*, *P*, **32.**
without notice to accused, *Q*, **32.**
Form of, *W*, **33.**
Reconsideration of, *C*, **34.**
Other places, Meaning of, in preamble, *P*, **5.**
Others, Meaning of, in preamble, *O*, **5.**

P

Paddy, Taken in lieu of money, *M*, **13.**
Partaker in work, whether an artificer, etc., *W*, **9.**
Payment, Application for issue of warrant for, *T*, **32.**
See RE-PAYMENT.
Pendency, Expiry of period of during, of the case, *T*, **24.**
Period of contract, Reasonableness, *D—J*, **38.**
Personal debt, whether an advance, *Q—R*, **13.**
Personal servants, whether artificers, etc., *C*, **9.**
Picture copyist, whether an artificer, etc., *Y*, **9.**
Picture painter, whether an artificer, etc., *H*, **10.**
Powers under Act, Care to be exercised in exercising, *J*, **7.**
Practice, Submission of calendar, *L*, **35.**
Preamble, Object of, *C*, **3.**
how far a guide, *D*, **3.**
A key to understanding of Act, *E*, **4.**
not always all parts of Act, *F*, **4.**
not to control operation of Act when language of Act is clear, *G*, **4.**
Wide, not affects body of Act though less in scope, *H*, **4.**
Body of Act having larger scope than example, *I*, **4.**
Construction beyond scope of Act as indicated by, *J*, **4.**
Recital in, differing from enacting part of Act, *K*, **4.**
may be consulted if enacting part be open to doubt, *L*, **4.**
This Act is less in scope than, *M*, **4.**
Scope of, *N*, 4.
Presidency town, Extension of Act, *F*, *G*, **12.**
Previous debt, is no advance, *Q—T*, **13, 14.**
Proceedings, Nature of, under 2nd part of S. 2, *H—K*, **26.**
Process, Duty of Magistrate before issue of, *W*, **21.**
Refusal to issue, *X*, *Y*, **21.**
Process-fees, Order of payment, *F*, **26.**
Punishment, when no opportunity given is illegal, *M—N*. **31.**

R

Reasonable excuse, Excuse should have reference to circumstance of occurrence of breach, *B*, **18.**
meaning, *Z*, **18.**
Interference of Magistrate, *C*, **19.**
Difference between parties as to mutual liabilities, *F*, **19.**
Plea of illness, *G*, **19.**

Received money, When failure to perform contract amounts to cheating, *J*, **23.**
Recognizance, Order for, legal—Breach of contract denied, *U*, **36.**
Reconsideration, of order, *C*, **34.**
Refund, Order for, of money in case of part performance, *Z*, **25.**
Remedy, under the Act is an additional one, *E*, **7.**
Repayment, power to order delivery of jewel, *M*, **24.**
Order for, after expiry of time agreed, *N—S*, **24.**
Expiry of period during pending of case, *T*, **24.**
Order for immediate, of advance, *U*, **25.**
Order directing, without specifying any time, *W*, **25.**
Order for, bad if sum advanced be not ascertained, *X*, **25.**
of proper amount, *Y—K*, **25, 26.**
Fixing time for, *Y*, **25.**
in case of part performance of contract, *Y—Z*, **25.**
Order for refund of money, *Z*, **25.**
Compensation, *A*, *B*, **25, 26.**
Expenses of suit, *C*, **26.**
fixing time for, of advance, *S*, **32.**
Resident, Secretary of State, whether in India, *B*, **12.**
Revision, of order passed under the Act, *D—F*, **34.**
Rubber plantation, workman in, *U*, **9.**
Rules, of interpretation of words in Statute, *K—L*, **7, 8.**

S

Secretary of State, whether resident in India, *B*, **12.**
Security, Magistrate may require, for due performance of order, S. 3, *R—U*, **35, 36.**
Several contracts, Procedure, *M*, **35.**
Sharer in profits, Act not applicable to contracts with, *D*, **7.**
Silk spinner, whether an artificer, etc., *V*, **9.**
Stamp, advance for purchase of, *O*, **17.**
Sub-contractor, whether an artificer, etc., *F*, **10.**
Successive complaints, Dismissal of, – Effect, *P*, *Q*, **35.**
Summary trial, Nature of enquiry, *D*, *E*, **22.**
Summons, See WARRANT.
Suppliers, Lime suppliers, *X*, **11.**
Whether artificers, etc., *V—X*, **11.**
Wood suppliers, *W*, **11.**
Skin suppliers, *Y*, **11.**
Supply labour, Contract simply to, *U—W*, **18.**
Contractor must himself be a workman, *Y*, **18.**
Sureties, Act not applicable to contracts with, *C*, **7.**
Act not applicable to, *K*, **10.**

T

Temple servant, Whether an artificer, etc., *B*, **9.**
Term certain, Intermittant contract for 3 years, *D*, **37.**
contract for a, *D—J*, **37, 38.**

Terms of contract, Strict compliance with, necessary, *Q*, **27**.
should be ascertained, *R*, *S*, **27**, **28**.
Test, to the enforceability of contract under the Act, *X*, **18**.
Third parties, Act not applicable to contracts with, *A*, **7**.
Not liable under the Act, *J*, **10**.
Time, Order for repayment after expiry of agreed, *N—S*, **24**.
Expiry of agreed, during pendency of case, *T*, **24**.
for repayment, *U—W*, **25**.
where, is essence of contract, *T—X*, **28**.
where, is not essence of contract, *Y—Z*, **29**.
fixed for repayment of advance, *S*, **32**.
Title, of Act—Guide for its construction, *A*, **3**.
Scope of, and preamble, *B*, **3**.
Transfer, Power to, cases under the Act, *J—K*, **34**.
Trial, Summary, *D—E*, **22**.
Procedure—Applicability of S. 370, Cr.P.C., *I*, **23**.

V

Valid contract, What is a, *Z*, **37**.
Voidable contract, What is a, *A*, **37**.
Void agreement, Definition, *Y*, **36**.
by minors, *C*, **37**.

W

Warrant, Arrest without, *C*, **21**.
Issue of, *W—C*, **21**.
Execution of, outside local jurisdiction, *Z—A*, **21**.
Application for issue of, for payment, *T*, **32**.
Wilfully, Meaning, *Z—E*, **18**, **19**.
Wilfulness, Proof of, of the breach necessary, *E*, **19**.
Withdrawal, of complaint, *H*, *I*, **34**.
Work, Advance to be liquidated by performance of,—Instances, *P—S*, **17**.
Work completed, S. 2 not applicable if, at date of complaint, *N—O*, **27**.
through other agency before lodging complaint, *P*, **27**.
Workman, In rubber plantation, *U*, **9**.
Persons held not to be, *A—X*, **9—11**.
Meaning of, *T*, **8**.
Workmen, Persons held to be, etc., within the Act, *U—Z*, **9**.
Writing fees, does not come within the act, *G*, **26**.

THE LAWYER'S COMPANION SERIES.

THE REFORMATORY SCHOOLS ACT, 1897

(ACT VIII OF 1897)

(WITH THE CASE-LAW THEREON)

BY

T. V. SANJIVA ROW,

FIRST GRADE PLEADER, TRICHINOPOLY,
(AUTHOR OF A "DIGEST OF PRIVY COUNCIL RULINGS,"
THE "CURRENT INDEX OF INDIAN CASES,"
THE "LAWYER'S REFERENCE,"
AND
THE "INDIAN EVIDENCE ACT").

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THE REFORMATORY SCHOOLS ACT, 1897.

TABLE OF CASES NOTED IN THIS VOLUME.

I. L. R. Allahabad Series.

			PAGE
15 A 208	...	Queen-Empress v. Narain ...	10, 13
20 A 158	...	Queen-Empress v. Mimai ...	26, 28
20 A 159	...	Queen-Empress v. Gobinda ...	26, 28
20 A 160	..	Queen-Empress v. Billar ...	26
21 A 391 (104) (F. B.)	...	Queen-Empress v. Hori ...	26, 27, 28, 29

I. L. R. Bombay Series.

14 B 381	...	Queen-Empress v. Manaji ...	14, 23

I. L. R. Calcutta Series.

25 C 333	...	Deputy Legal Remembrancer v. Ahmad Ali ...	6, 12, 26
25 C 852	...	Queen-Empress v. Pratap Chunder Ghose ...	26
27 C 133	...	Queen-Empress v. Maki Muddin ...	14, 23, 27, 28
28 C 423	...	Reasut v. Courtney ...	27

I. L. R. Madras Series.

12 M 94	...	Queen-Empress v. Madasami ...	7, 29
21 M 430	...	Queen-Empress v. Ramalingam ...	6, 14, 26
24 M 13	...	Queen-Empress v. Rama ...	10, 12, 15, 23, 27

Bombay Law Reporter.

1 Bom L R 162	...	Queen-Empress v. Kaidya Husain ...	11, 21, 26
6 Bom L R 550	...	Emperor v. Amir Bhikan ...	26, 27

Ratanlal's Unrep. Cr. Cases.

Rat Un Cr C 494	...	Queen-Empress v. Manaj, Queen-Empress v. Lal...	14
Rat Un Cr C 518	...	Queen-Empress v. Purushottam, Queen-Empress v. Lal ...	10
Rat Un Cr Cas 586	...	Queen-Empress v. Kanji ...	14
Rat Un Cr C 726	...	Queen-Empress v. Gopala ...	11, 23
Rat Un Cr C 905	...	Queen-Empress v. Bhausing ...	7, 29
Rat Un Cr C 936	...	Queen-Empress v. Bhujia Gujia ...	13, 29
Rat Un Cr C 947	...	Queen-Empress v. Bhagia Bhaoo ...	12, 13

Calcutta Weekly Notes.

			PAGE
2 C W N 11	...	Deputy Legal Remembrancer v Ahmad Ali ...	6, 12
2 C W N 572	...	Roop Lal Das v. David Monook ...	26
3 C W N 576	...	The Empress v. Haridas Mukherjee ...	23, 27
4 C W N 225	...	The Deputy Legal Remembrancer v. Kopil Kahar ..	13, 14
5 C W N 210	...	Radha Kristo Barat v. Gokula Nut ...	11, 21, 27, 28
5 C W N 211	...	Reasut v. Courtney ...	27

Nagpur Law Reports.

4 N L R 180	...	Rama v. Emperor ...	11

Punjab Record.

6 P R 1882 (Cr)	...	Empress v. Muhamdu ...	29
18 P R 1907	...	Ram Singh v. King Emperor ...	27

Punjab Law Reporter.

55 P L R 1908	...	Ram Singh v. The Crown ...	27

Lower Burma Rulings.

2 LB R (1903-1904) 121	...	King-Emperor v. Nga Pokyam ...	21
2 L B R (1903-1904) 216	...	King-Emperor v. Tha Tun Aung ...	11
3 L B R 30	...	King-Emperor v. Ha Taw ...	35
3 L B R 46	...	San Mlaing v. King-Emperor ...	12, 13, 15

Weirs Criminal Rulings.

1 Weir 878	...	Abdul Gaffar ...	11
1 Weir 884	...	The Public Prosecutor v. Bantoo ...	12

Criminal Law Journal of India.

9 Cr L J 99	...	Rama v. Emperor ...	11

THE REFORMATORY SCHOOLS ACT, 1897.

CONTENTS.

I.—Preliminary.

SECTIONS.

1. Title, commencement and extent.
2. Repeal of Act V of 1876.
3. Section 399 of Act X of 1882 repealed on date fixed by a notification under section 1, sub-section (3).
4. Definitions.

II.—Reformatory Schools.

5. Power to establish and discontinue Reformatory Schools.
6. Requisites of Schools.
7. Inspection of Reformatory Schools.
8. Power of Courts to direct youthful offenders to be sent to Reformatory Schools.
9. Procedure where Magistrate is not empowered to pass an order under section 8.
10. Power of Magistrates to direct boys under fifteen sentenced to imprisonment to be sent to Reformatory Schools.
11. Preliminary enquiry and finding as to age of youthful offender.
12. Government to determine Reformatory School to which such offenders shall be sent.
13. Persons found to be over eighteen years not to be detained in Reformatory Schools.
14. Discharge or removal by order of Government.
15. Power to Governor General in Council to direct use of Reformatories in one province for reception of youthful offenders from another.
16. Certain orders not subject to appeal or revision.

III.—Management of Reformatory Schools.

17. Appointment of Superintendent and Committee of Visitors or Board of Management.
18. Superintendent may license youthful offenders to employers of labour.
19. Cancellation of license.

SECTIONS.

20. Determination of license.
21. Cancellation of license in case of ill-treatment.
22. Superintendent to be deemed guardian of youthful offenders.
Power to apprentice youthful offender.
23. Duties of Committee of Visitors.
24. Powers of Board of Management.
25. Power to appoint Trustees or other Managers of a School to be a Board of Management.
26. Power of Board to make rules.

IV.—Offences in relation to Reformatory Schools.

27. Penalty for introduction or removal or supply of prohibited articles and communication with youthful offenders.
28. Penalty for abetting escape of youthful offender.
29. Arrest of escaped youthful offender.

V.—Miscellaneous.

30. Application of Act XV of 1869 to youthful offenders detained in Reformatory Schools.
31. Power to deal in other ways with youthful offenders, including girls.
32. Procedure when youthful offender under detention in a Reformatory School is again convicted and sentenced.

THE REFORMATORY SCHOOLS ACT, 1897.

ACT No. VIII OF 1897.

(11th March, 1897.)

An Act to amend the law relating to Reformatory Schools and to make further provision for dealing with youthful offenders.

WHEREAS it is expedient to amend the law relating to Reformatory Schools and to make further provision for dealing with youthful offenders; It is hereby enacted as follows :—

I.—Preliminary.

Title, commencement and extent.

1. (1) This Act may be called the Reformatory Schools Act, 1897 ; and

(2) It shall come into force at once.

(3) This section and section 2 shall extend to the whole of British India. The other sections shall extend in the first instance to the whole of British India except the territories for the time being administered by the Lieutenant-Governor of the Punjab and the Chief Commissioner of Coorg, but either of the said Local Governments may at any time, by notification in the local official Gazette, extend these sections to their territories from such day as may be fixed in any such notification.

Old Act.

Act V of 1876.....S. I.

Repeal of Act V of 1876.

2. (1) The Reformatory Schools Act, 1876 [1], is hereby repealed.

(2) But all proceedings taken, orders passed, officers appointed or authorised and rules made under the said Act shall, as far as may be [2], be deemed to have been respectively passed, appointed or authorised and made under this Act.

(3) Any enactment or document referring to the said Act shall, as far as may be, be construed to refer to this Act, or to the corresponding portion thereof.

(Notes).

1.—"Reformatory Schools Act 1876."

Source.

The Reformatory Schools Act V of 1876 is based on 29 and 30, Vict. Ch. 117. **A**

2.—"As far as may be."

(1) **Interpretation.**

The words "so far as may be" in this section must be interpreted as meaning "in so far as the rules are not inconsistent with the provisions of the new Act." Per *Moore*, J. 21 M. 430. **B**

(2) **Rules framed under the Old Act, whether in force after the passing of this Act.**

The Government of Madras in G.O. No. 934 Judicial of the 2nd July 1897 has observed that the operation of the rules framed by the Government of India under S. 22 of the old Act has been "saved" by sub-S. 2 of this section and has decided that it is not necessary to frame new rules. Therefore the rules under the old Act have to be followed, in so far as they are not inconsistent with the provisions of this Act. 21 M. 430.

EXAMPLE.

Under S. 7 of the old Act a juvenile could be sent to a reformatory for a period of not less than two years and not more than seven years. Under S. 8 of this Act the limits prescribed are not less than three or more than seven years. The rule, therefore, passed under the old Act that a boy over ten should be confined for a period of not less than five years with the proviso that he must not be detained after the age of 18, is not inconsistent with the provisions of this Act. 21 M. 430. **C**

Section 399 of Act X of 1882 repealed on date fixed by a notification under section 1, sub-section (3).

X of 1882.

3. From the date fixed by any notification issued under section 1, sub-section (3), section 399 of the Code of Criminal Procedure, 1882, shall be repealed in the province to which the notification relates. [1]

Old Act.

Act V of 1876....S. 2.

(Notes).

"S. 399....relates."

(1) **Extent of the repeal of S. 399, Cr.P.C.**

S. 399, Cr. P.C., does not apply to any place in which this Act is for the time being in force and it is therefore in force only in those excepted territories or districts to which the Code of Criminal Procedure may have been extended, and Reformatory Schools Act V of 1876 would still be in force, in such of these territories or districts to which it might have been extended, notwithstanding the general repeal of that Act in respect of British India by this Act. **D**

(2) **Repeal of Act V of 1876 does not revive S. 399, Cr. P.C.**

The repeal of Act V of 1876 does not revive S. 399, Cr. P.C., in places in which it has been repealed by the first mentioned Act, regard being had to the provisions of S. 7 of the General Clauses Act of 1897, which in fact embodies the rule of English Law applicable to the subject. 25 C. 333=2 C.W.N. 11; see Maxwell on Interpretation of Statutes, 3rd Ed. 585. **E**

"S. 399....relates"—(Concluded).

(3) **Combined effect of Act V of 1876 and S. 399, Cr. P.C.**

(*a*) Act V of 1876 provides only for male juvenile offenders being sent to Reformatory Schools by Magistrates of first class and S. 399 of Act X of 1882, Crim. Pro. Code, so far as it empowers a Magistrate not of the first-class to direct that the male juvenile offender be sent to a Reformatory, is repealed. 12 M. 94. **F**

(*b*) "The reasonable construction according to which effect may be given to both enactments in force is that the admission of a male juvenile offender into a reformatory school must be made under the order of a first class Magistrate or other officer as provided by S. 7, Act V of 1876, and that any Criminal Court acting under S. 399 may direct that a female juvenile offender be sent to a reformatory when one is established." *Per Muthusami Aiyar, J.* 12 M. 94.

N. B.—In accordance with the above view as to reformatories an express provision was made in S. 399, sub-S. 3, that that section shall not apply to any place in which this Act is for the time being in force. **G**

Definitions.

4. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "youthful offender" means any boy who has been convicted of any offence punishable with transportation or imprisonment and who, at the time of such conviction, was under the age of fifteen years [1]:

(*b*) "Inspector General" includes any officer appointed by the Local Government to perform all or any of the duties imposed by this Act on the Inspector General: and

(*c*) "District Magistrate" shall include a Chief Presidency Magistrate.

Old Act.

Act V of 1876....S. 3.

Sub-S. (*c*) is new.

(Notes).

1.—"At the time of....fifteen years."

(1) **Record must show that the boy is under 15.**

On 2nd March 1897, a second class Magistrate convicted a youthful offender of theft and sentenced him to imprisonment for one month. As the medical officer of the Jail was of opinion that the boy was 15 years of age, a first class Magistrate, on the 11th idem, ordered his detention in a Reformatory School for two years and on the 18th idem increased the period to three years. As it did not appear from the record of the case that the accused person was under the age of 15 years, the High Court quashed the orders of the first class Magistrate dated 11th and 18th of March as illegal under this Act which came into force on the 11th March 1897. Rat. Unrep. Cr. C. 905. **H**

I.—"At the time of....fifteen years"—(*Concluded*).

(2) **Age under Whipping Act.**

Under S. 5 of the Whipping Act, the expression 'juvenile offender' means an offender who in the opinion of the Court is under 16 years of age. **I**

(3) **Jurisdiction of the Magistrate—Age of the offender.**

In order that a Magistrate should have jurisdiction under the Act, it is necessary that the offender should be under 15 years of age at the time of the conviction. Unless the Magistrate is satisfied as to this matter, he should not proceed under the Act. 1 Weir 879. **J**

II.—Reformatory Schools.

Power to establish and discontinue Reformatory Schools 1.

5. With the previous sanction of the Governor General in Councill, the Local Government may—

(*a*) establish and maintain Reformatory Schools at such places as it may think fit;

(*b*) use as Reformatory Schools kept by persons willing to act in conformity with such rules, consistent with this Act; as the Local Government may prescribe in this behalf;

(*c*) direct that any school so established or used shall cease to exist as a Reformatory School or to be used as such.

Old Acts.

Act V of 1876. S. 4.

(Notes).

I.—"Power....schools."

Places declared to be Reformatories under the Act.

(*a*) For Madras, the Reformatory School at Chingleput. (Mad. Rule. etc. No. 259. Fort. St. George Gazette, 1887, Part I, p. 811).

(*b*) For Bombay.

(i) part of the Poona City jail set apart for the confinement of juvenile offenders. (Bombay Gazette, 1873, Part I, p. 98).

(ii) The Reformatory School at Yerrowda. Bom. Gaz. 1889, Part I, p. 510.

(*c*) For Bengal, the Reformatory Schools at Alipore and Hazaribagh.

(*d*) For Burma (except the Shan States).

(i) the Reformatory School at Insein, or in case accommodation is not immediately available there, the juvenile ward of the Rangoon or Myingyan Central Jail. Burma Gazette 1897, Part I, p. 301.

(ii) the Reformatory at Poungdeh. Bri. Bur. Gaz. p. 340.

(*e*) For Punjab, the Reformatory School at Delhi. (1903, Punjab Record, Part II, etc. Chief Court Cir. p. 20.

(*f*) For the United Provinces, the Reformatory School at Bareilly. All. Man. p. 309.

(*g*) For Sindh, the juvenile prison at Shikarpore for all juvenile offenders sentences in the Districts of Karachi and Hyderabad. Sindh Gaz. 1875, Part I. p. 556. **K**

Requisites of schools.

6. Every school so established or used must provide—

(a) sufficient means of separating the inmates at night;

(b) proper sanitary arrangements, water-supply, food, clothing and bedding for the youthful offenders detained therein;

(c) the means of giving such youthful offenders industrial training;

(d) an infirmary or proper place for the reception of such youthful offenders when sick.

Old Act.

Act V of 1876.....S. 5.

Inspection of Reformatory Schools.

7. (1) Every school intended to be established or used as a Reformatory School shall, before being used as such, be inspected by the Inspector General, and if he finds that the requirements of section 6 have been complied with, and that, in his opinion, such school is fitted for the reception of such youthful offenders as may be sent there under this Act, he shall certify to that effect, and such certificate shall be published in the local official Gazette, together with an order of the Local Government establishing the school as a Reformatory School or directing that it shall be used as such, and the school shall thereupon be deemed to be a Reformatory School.

(2) Every such school shall, from time to time, and at least once in every year, be visited by the said Inspector General, who shall send to the Local Government a report on the condition of the school in such form as the Local Government may prescribe.

Old Act.

Act V of 1876.....S. 6.

Power of Courts to direct youthful offenders to be sent to Reformatory Schools.

8. (1) Whenever any youthful offender is sentenced to transportation or imprisonment [1], and is, in the judgment of the Court by which he is sentenced, a proper person to be an inmate of a Reformatory School [2], the Court may, subject to any rules made by the Local Government, direct that, instead of undergoing his sentence [3], he shall be sent to such a school, and be there detained for a period which shall be not less than three or more than seven years. [4]

(2) The powers so conferred on the Court by this section shall be exercised only by (*a*) the High Court, (*b*) a Court of Session, (*c*) a District Magistrate, and (*d*) any Magistrate specially empowered by the Local Government in this behalf [5], and may be exercised by such Courts whether the case comes before them originally or on appeal. [6]

(3) The Local Government may make rules [7] for—

(*a*) defining what youthful offenders should be sent to Reformatory Schools, having regard to the nature of their offences or other considerations, and

(*b*) regulating the periods for which youthful offenders may be sent to such schools according to their ages or other considerations.

Old Act.

Act V of 1876, S. 7 corresponds to sub-S. (1) and (2)
,, ,, S. 22 ,, sub-S. (3).

(Notes).

1.—"Sentenced....imprisonment."

(1) **On conviction, sentence must be passed.**

In the case of a juvenile offender whom it is desirable to confine in a Reformatory, a Magistrate must, on convicting him sentence him according to law. Rat. Unrep. Cr. C. 518. **L & M**

(2) **Sentence ought to be self-contained.**

(*a*) As a general proposition it is clearly the duty of a Magistrate when pronouncing a sentence to define precisely the nature of the sentence intended. Generally, the sentence, like the decree in a civil case ought to be self-contained, so that the functionary who has to execute it should have nothing to do but obey the directions given without making any inquiry on his own account. There are no words in the Act to indicate that a Magistrate acting under this section is not to proceed in accordance with this principle. Per Shepherd, J. 24 M. 13. **N**

(*b*) The sentence must be plain and complete in itself, so that the officer who has to act under the warrant may know exactly for what period the person sentenced may be legally detained. 15 A. 208. **O**

(3) **Bound over to keep peace, in default to be imprisoned—No sentence.**

Where the accused was only bound over to keep the peace and in default of furnishing sureties he was ordered to be imprisoned, such an order is not a sentence of imprisonment or transportation. In such cases the order detaining the accused in a Reformatory is illegal. 7 Bur. L. R. 80. **P**

2.—"A proper person....school."

(1) **Every juvenile offender should not be sent to Reformatory.**

(*a*) It is not every boy that is convicted of an offence that can be sent to the Reformatory School, but only such boys as are found to be proper persons to be inmates of such a school. As a rule no boy should be sent to a Reformatory on a first conviction, unless there is reasonable cause for supposing that he is being trained up to, is or likely again to lapse into crime, being without parental or other control. 1 Weir 878; Rat. Unrep. Cr. C. 726. **Q**

(*b*) A youthful offender convicted of murder and sentenced to transportation for life is eligible for despatch to the Reformatory School. But he should not ordinarily be sent to such a School *e.g.*, where the conduct of the accused argued great depravity. 4 N.L.R. 180=9 Cr. L.J. 99. **R**

(2) **Inmates of a school not to be associated with convicts of serious offences.**

The inmates of a Reformatory School ought not to be obliged to associate with a person convicted of a serious offence, such as rape. Rat. Unrep. Cr. C. 726. **S**

3.—"Instead of....sentence."

(1) **Direction for detention should be passed only after sentence.**

(*a*) A direction to confine in a Reformatory School can be made under this section only after passing a sentence of transportation or imprisonment. Rat. Unrep. Cr. Cas. 726: *ibid* 528; 1 Bom. L.R. 162. See also 5 C.W.N. 210 noted under the next section. **T**

(*b*) If the Magistrate sentences the juvenile offender to imprisonment, whether rigorous or simple, he may then make a further order such as is contemplated in the section. Rat Unrep. Cr. Cas. 518. **U**

(2) **Course to be adopted under the section.**

The course to be adopted under this section is to pass an ordinary sentence of imprisonment and then to direct that, instead of undergoing such sentence, the offender shall be sent to a Reformatory School, there to be detained for a period in conformity with the Act and the rules made this section. 1 Weir 878. **V**

(3) **No sentence—Mere order for detention—Illegality.**

In the absence of a sentence of transportation, or imprisonment, the order directing the accused to be kept in a Reformatory School is illegal. 1 Weir 879; Rat. Unrep. Cr. Cas. 726; 5 C.W.N. 210. **W**

(4) **Diffenence in procedure under this section and S. 562 Cr. P.C.**

Under this section a substantive sentence of transportation or imprisonment has to be first passed and the Court may then direct that instead of undergoing that sentence the accused shall be sent to a Reformatory School. But under S. 562 Cr. P.C. The Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond to appear and receive sentence when called upon and in the meantime to keep the peace and be of good behaviour. 2 L.B.R. (1903-1904) 216. **X**

4.—"Not less than....years."

(1) **Time of detention.**

In respect to time of detention, the Act lays down three rules.

(i) The youthful offender must be a boy under the age of 15 years at the date of his conviction ;

(ii) The period of detention in the school must not be less than three years ; and

(iii) The period of detention must not exceed seven years. 24 M. 13. **Y**

(2) **Magistrate should state the exact period of detention.**

Where a Magistrate, who sentenced a youthful offender for six months, and directed that, in lieu of the imprisonment, he should be detained in a Reformatory School, unless he shall attain the age of 18 years at an earlier date, *held* that the order directing the detention of the boy was not properly made, inasmuch as it had not fixed the exact period, 24 M. 13. **Z**

(3) **Minimum period of detention is 3 years.**

(*a*) Where an accussed who was convicted of the offences under Ss. 454 and 380, I.P.C. and sentenced to one years' rigorous imprisonment for each offence, but being 14 years old was directed to be detained in the Reformatory for two years, the High Court reversed the latter direction on the ground that the order of the Magistrate was illegal, being opposed to the provisions of this section. Rat. Unrep. Cr. Cas. 947. **A**

(*b*) Where the accused, a boy of 14 or 15 years, decidedly under 16, was convicted of an offence under S. 457, I.P.C. by the Deputy Magistrate of Barisal who, purporting to act under S. 399 (Cr. Pro. Code) Act X of 1882 and S. 7 of Act V of 1876, directed him to be confined in a Reformatory for two years, *held* that the order could not be sustained under S. 7 of Act V of 1876 as that Act had been repealed before the date of the order and the commission of offence or under S. 8 of this Act as the order was in contravention of rule 1 of the Rules (Notification No. 340, Home Department, dated 13th March 1878) made by the Governor-General in Council under S. 22 of the Act, this being the first conviction of the accused and the latter being over ten years of age, the minimum period for which he could be sentenced to detention in a Reformatory would be three years. 25 C 333 = 2 C.W.N. 11. **B**

(4) **Order directing a boy of 11 years to be detained for 5 years, legal.**

The notification of the Government of India dated 30th June 1887, does not require that a youthful offender over ten years of age shall be detained in the Reformatory until he is 18 years of age in every case. It only requires that he should be detained for a period of at least five years, unless he would before the expiration of that period attain the age of 18. In the latter case his detention should be ordered only for such a shorter period as would bring him up to 18 years of age. Hence an order directing that an offender of 11 years of age to be detained for 5 years is perfectly legal. 1 Weir 884. But see 3 L. B. R. 46. **C**

4.—"Not less than....years"—(Concluded).

(5) **Offender over 13 years—Period of detention.**

Where the offender is over 13 years of age, the period of detention in a Reformatory School to which he should be sentenced should be such that he will not leave the school until he has attained the age of 18 years. 3 L. B. R. 46. **D**

(6) **Offender over 14—Detention for 2 years.**

Where a boy over 14, but whose exact age was not ascertained, was sent to a Reformatory School to be detained therein for a period of two years, *held* that such an order, having regard to the rule made by the Governor-General in Council on the 14th March 1889 under S. 22 of the old Act (corresponding to this section) was illegal. The proper procedure would be for the Magistrate to ascertain the precise age of the boy at the date of his order and to make an order that he be detained for such period as would be equivalent to the period intervening between his then age and eighteen. 15 A. 208. **E**

(7) **Offender under 16—Detention for 3 years.**

A Sessions Judge convicted the accused under S. 457 I.P.C. and sentenced him to three years' rigorous imprisonment and directed under S. 399 Cr.P.C. that the accused was "under the age of 16 years" he should instead of being imprisoned in a criminal jail, be detained for three years in a Reformatory School. As in passing this sentence the Sessions Judge had overlooked the fact that S. 399 Cr.P.C. was repealed when Act V of 1876 was extended to the Presidency of Bombay and that this Act was in force at the time, the High Court reversed the sentence and remanded the case for a legal sentence to be passed under this section, after holding the preliminary inquiry specified in S. 11, *infra*. B.H.C. Cr. Rul. 38 of 1897. **F**

5.—"Magistrates....behalf."

(1) **What Magistrates are specially empowered.**

(*a*) All Presidency Magistrates of first class are specially empowered to exercise the powers conferred by this section. G.O.No. 934, dated, 2nd July 1897. **G**

(*b*) In Punjab, no Magistrate has yet been specially empowered by the Local Government in this behalf. 1903. P.R. 2nd Part, Executive Chief Court Cir. Pro. noted below. **H**

(2) **Order by a Magistrate not specially empowered illegal.**

(*a*) A Magistrate could act under this Act only when he is empowerred by the Local Government in that behalf. Rat. Unrep. Cr. Cas. 936. **I**

(*b*) Therefore the order of a Magistrate not so specially empowered, directing the detention of the offender in a Reformatory School is illegal and is liable to be set aside. Rat. Unrep. Cr. Cas. 947. **J**

6.—"Or on appeal."

(1) **Power of a Court of appeal to pass order for detention in lieu of imprisonment.**

(*a*) WHERE THERE IS EVIDENCE AS TO AGE.

A Sessions Judge, can, on appeal from a Magistrate, pass an order for detention in a Reformatory School in supersession of an order for imprisonment provided only he has sufficient materials before him as to the age of the accused. 4 C.W.N. 225.

6.—"Or an appeal"—(Concluded).

N.B.—This was a decision under this Act, but under S. 7 of the Old Act V of 1876, it was held that the section applied only to the Court by which the youthful offender was sentenced and if the appellate Court thought proper to detain the offender in a Reformatory School it ought to have acted under S. 8 of the said Act (corresponding to S. 9 of this Act). Rat. Unrep. Cr. Cas. 586. **K**

(*b*) WHEN THERE IS NO EVIDENCE AS TO AGE—PROCEDURE.

Where the Sessions Judge, as a Court of appeal, has not before him any evidence as to the age of the accused or anything so as to show that he was a youthful offender within the terms of the Act or to indicate the period of detention in the Reformatory which he may be ordered to undergo in lieu of the sentence of imprisonment, he must take evidence under S. 11 and record a finding thereon stating the age, as nearly as may be, and then with reference to such finding pass a sentence within the terms of this Act and the rules made by the Local Government thereunder. 4 C.W.N. 225. **L**

(2) **Nature of the proceeding under the section.**

(*a*) JUDICIAL PROCEEDING.

(i) Under this section, clearly, evidence may be taken by the Magistrate as to the age of the offender; and the proceeding of the Magistrate, involving, as it does, the alteration of a sentence after the exercise of judicial discretion, is a judicial proceeding within the meaning of Ss. 4 and 435. Cr. Pro. Code. 14 B. 381; Rat. Unrep. Cr. Cas. 494. **M**

(ii) The order of the Magistrate under this section is not an executive act. The Magistrate is referred to in the Act *qua* Magistrate, and the High Court has jurisdition to revise the order of the Magistrate passed under the section. (*Ibid.*) **N**

(*b*) WHETHER A CASE UNDER S. 28 LETTERS PATENT.

It is doubtful whether it is a case under S. 28 of the Letters Patent. 14 B. 381. **O**

7.—Local Government....rules."

(1) **Power to make rules.**

Rules under section 22 of Act V of 1876 are directed to be made by the Governor-General in Council, while under this clause the duty of framing such rules is entrusted to the Local Government. 21 M. 430. **P**

A. Rules in Bengal and Assam.

I. Youthful offenders, whom the Court or the District Magistrate, as the case may be, does not think fit to discharge after due admonition, or to deliver to their parents, guardian or nearest adult relative on the execution of a bond for good behaviour, under S. 31 of the Act, should subject to the next following rule, be sent to a Reformatory School, if they are convicted of offences against property or any other offence showing dishonesty or depravity, (1) in all cases when they have been previously convicted of any such offence, and (2) on first convictions, when a brief term of imprisonment is considered an undesirable and inadequate punishment, or they are without proper parental or other control or there is reasonable cause for supposing that they are being trained to, or are likely to replace into, crime. (See 27 C. 133 noted S. 16, *infra*). **Q**

7.—"Local Government....rules"—(Continued).

A. Rules in Bengal and Assam—(*Concluded*).

II. Youthful offenders should not be sent to a Reformatory School when they are convicted of an unnatural offence, or have, on a previous conviction, undergone imprisonment in a jail for more than six months, or are seriously deformed or of week intellect or subject to epileptic fits or other well-marked nervous disease. **R**

III. Youthful offenders should be sent to a Reformatory School for not less than seven years when they are under eleven years of age, and for not less than five years when they are over that age, unless, in the latter case, they shall attain earlier the age of eighteen. **S**

IV. The foregoing rules, shall not, however debar the authorities having the control and management of a Reformatory School from recommending to the Government the discharge, under the provisions of S. 14 of the Act, of any youthful offender, who, in their opinion, may safely and with advantage to himself be released before the expiry of the full term for which he was sent to the Reformatory School. Calcutta Gazette, Part I, p. 226. 1st March 1899 ; Assam Gazatte 1899, Pt. I, p. 180. **T**

B. Rules in Madras and Bombay.

(1) **Period of detention.**

No boy shall be sent to a Reformatory School, if under ten years of age, for a less period than five years unless he shall sooner attain the age of eighteen years. Gov. of India Notification 1076. 30th June 1887 ; Mad. Rules etc. No 258. p. 156 ; Fort. St. George Gazette 1887, Pt. I, p. 580 ; Bombay Gaz. Pt. I, p. 758. **U**

(2) **Effect of the above notification.**

The effect of the Government Notification regulating the period of detention of youthful offenders is only to fix a minimum of five years for all cases in which such a period was legally possible, that is, in all cases where the boy was not over thirteen at the date of conviction and it was not intended to prevent the Magistrate from fixing a period short of five years, but not short of three years in the case of a boy over thirteen. 24 M. 13. See also I Weir 884 and 3 L. B. R. 46. **V**

(3) **Who should not be sent to Reformatory ?**

No boy, whose sentence will bring him up to, or beyond the close, of his eighteenth year, or one who is both old or troublesome or in incorrigible, should be sent to a Reformatory School. Mad. Rules etc. No. 261. **W**

C. Rules in the United Provinces.

(1) No person may be ordered to be detained in a Reformatory school, unless

(*a*) he is a male ;

(*b*) he is under the age of 15 years ;

(*c*) he is convicted of an offence (as defined in the General Clauses Act; 1897, S. 3) punishable with transportation or imprisonment.

(*d*) he is actually sentenced to transportation or imprisonment, and

(*e*) he is of a class declared by the rules, made by Government, under S. 8 (3) suitable for Reformatory treatment. **X**

(2) Before ordering detention in a Reformatory School, the Court must pass a substantive sentence of transportation or imprisonment, and such sentence should in view of S. 12, Act VIII of 1897, not be a nominal

7.—"Lcoal Government....rules"—(Continued).

C. Rules in the United provinces—(*Concluded*).

but an adequate punishment for the offence. The Court has no power to direct detention in Reformatory School either without a substantive sentence of transportation or imprisonment or in addition to such a sentence, but must order that the offender, instead of under going a sentence, imposed, shall be detained in the Reformatory Shool. **Y**

(3) The period for which the Court may order the detention in a Reformatory School of youthful offenders admissible under the Act and rules, must not be less than three years, nor more than seven years. The following table shows the period of detentiou in the case of boys between the ages of 9 and 14 who alone should, as a rule be sent to the Reformatory School :—

Age of youthful offender.	Period of detention.
9 years	seven years
10 years	Not less than five years and not more than seven years.
11 years	do do.
12 years	do and not more than six.
13 years	Five years
14 years	Four years.

1. The most proper subjects for reformatory treatment are those who are without proper parental or other control, and who have committed an offence or offences against property.

2. As a rule, no boy should be sent to a Reformatory School, on a first conviction, unless there is reasonable cause for supposing that he is being trained up to, or likely again to lapse into crime.

3. As a rule, it is not desirable to send boys to a Reformatory School before they have completed their ninth, or after they have completed their fourteenth year of age.

4. No boy belonging to any of the undermentioned tribes, whether such tribes, have or have not been formally proclaimed in these provinces under the Criminal Tribes Act, 1871, should be sent to a Reformatory School. The tribes are :—

Aheriahs	Doms.
Beriahs.	Haburahs.
Bauriahs,	Kanjars.
Barwars	Nats.
Bhutus,	Sanariahs.
Daleras,	Sansiahs.

Other boys who appear to be habitual offenders, should be sent (if at all) at an early stage in their career, being less amenable to reforming influences as they approach the age of 15.

5. No boy should be sent to a Reformatory School who has been convicted of an unnatural offence, or whose antecedents afford reasonable grounds for assuming habitual immorality.

6. A youthful offender convicted of murder should not ordinarily be sent to a Reformatory school. All. Man. p. 311; N.W.P. Gaz. 30th July 1887, Pt. VI, pp. 167—168. **Z**

7.—"Local Governments.... rules"—(Continued).

D. Rules in Burma (except the Shan States).

If (*a*) either of the youthful offender's parents is a habitual criminal, or

(*b*) the youthful offender is destitute, or

(*c*) circumstances under which the youthful offender is convicted indicated a general corruption of moral character, or

(*d*) the youthful offender having been once previously convicted is again convicted of a similar offence, then the period for which he may be sent to a Reformatory School shall not be less than :

(i) if he is not over ten years of age, seven years :

(ii) if he is over ten and not over thirteen years of age, five years :

(iii) if he is over thirteen years of age, such period as may bring him to the age of eighteen.

The period for which a youthful offender, whose case does not fall within the above rule, may be sent to a Reformatory School shall not be less than (i) if he is over ten years of age, five years ; (ii) if he is over thirteen years of age, three years. Burma Gazette 1897, Pt. I, p. 301. **A**

E. Rules in Assam.

Rule I. No boy shall be sent to a Reformatory School on a first conviction (except as provided in rule III), if under ten years of age, for a less period than five years ; if over ten for a less period than three years, unless he shall sooner attain the age of 18. **B**

Rule II. On a subsequent conviction for a similar offence, a boy under ten years of age, shall not be sent to a Reformatory School for a less period than seven years ; if over ten, for a less period than five years, unless he shall sooner attain the age of 18. **C**

Rule III. A first conviction may bring a boy under Rule II.

(1) if he belongs to a criminal tribe within the meaning of Act XXVII of 1871, S. 2 ;

(2) if either of his parents is a habitual criminal ;

(3) if he is destitute ; and

(4) if the offence of which he is convicted is one arguing great depravity. Gazette of India, 1895, Pt. I, p. 507 ; Assam Gaz. 1895, Pt. III, p. 840. **D**

F. Rules in Punjab.

I. It should be noted that the only Courts empowered to direct youthful offenders to be sent to the Reformatory School are :—

(*a*) the Chief Court

(*b*) the Court of Session

(*c*) the Court of a District Magistrate and

(*d*) the Court of any Magistrate specially empowered by the Local Government in this behalf. 1903 P.R. IInd. Part. pp. 20—22.

The Local Government does not, at present, propose to specially empower any other Magistrates ; but any Magistrate who has not been so empowered may under section 9 of the Act refer the case of any youthful offender to the District Magistrate to whom he is subordinate and all Magistrates should do so in suitable cases. **E**

II. A youthful offender is defined as meaning any boy who has been convicted of any offence punishable with transportation or imprisonment, and

7.—"Local Governments....rules"—(Continued).

F. Rules in Punjab.—(*Continued*).

who, at the time of such conviction, was under the age of 15 years; and it is incumbent on all Courts and Magistrates dealing with cases of youthful offenders, whether specially empowered or not, to make a preliminary inquiry and to record a finding as to the age of the offender. In taking the medical evidence mentioned in paragraph (IV) (*a*), of this circular, the opinion of the medical officer as to the age of the boy should invariably be recorded. F

III. Under Punjab Government Notification No. 427-A, dated the 2nd October 1903, a Court or Magistrate convicting any youthful offender of any of the offences noted below must send the offender to the Reformatory School, provided such Court or Magistrate is of opinion that the offender should not be—

(*a*) whipped or

(*b*) dealt with under section 562 of the Code of Criminal Procedure or

(*c*) dealt with under section 31 of the Reformatory Schools Act, the provision of which are very similar to those of section 562 of the Code of Criminal Procedure.

It will be observed that this gives Courts and Magistrates no discretion: they must either sentence every youthful offender, upon conviction of one of the specified offences, to be whipped, or must deal with him under section 562 of the Code of Criminal Procedure, or under section 31 of the Reformatory Schools Act. If the Court or Magistrate is of opinion that the youthful offender cannot be adequately dealt with in any of these three ways, such Court or Magistrate has no option but to send the offender to the Reformatory School.

List of the offences specified

(1) Chapter XII; Chapter XVI, except sections 302, 303, 304, 307, 308, 311 to 318 inclusive, 328, 354, 367, 372, 373, 376 and 377;

Chapter XVII, except sections 384 to 389 inclusive, 395 to 402 inclusive, and 413; and chapter XXII of the Indian Penal Code;

(2) Section 19 (1) of the Criminal Tribes Act, XXVII of 1871; or

(3) Any abetment or attempt in connection with any such offence as above detailed. G

IV. It should be borne in mind

(*a*) that he is not blind, insane, idiot, leprous, tuberculous, epileptic, or suffering from any permanent physical incapacity for industrial employment; or

(*b*) that he has not been twice previously convicted and sentenced for any offence under Chapter XII or Chapter XVII of the Indian Penal Code. Two or even more previous convictions under other chapters of the Indian Penal Code do not in themselves render a boy inadmissible to the Reformatory School, provided that the aggregate amount of imprisonment undergone does not exceed three months; or

(*c*) that he has not been previously convicted under section 377 of the Indian Penal Code.

(*d*) that he has not undergone detention in jail for a period of or periods amounting in all to three months.

7.—"Local Governments....rules"—(Continued).

F. Rules in Punjab.—(*Continued*).

A youthful offender with any of these disqualifications will not be admitted into the Reformatory School and Courts and Magistrates must deal with such an offender in the ordinary course under the Indian Penal Code or under section 562 of the Code of Criminal Procedure. These rules will, it is hoped, secure as inmates of the Reformatory School casual Criminals and first offenders capable of Reformation, and will exclude the corrupting influence of incorrigible offenders, and of boys who have already learnt the evil that can be learnt in jail. **H**

V. Section 8, sub-section (1) of the Reformatory School's Act prescribes the period for which Magistrates must order detention in the Reformatory School. This period cannot be less than three or more than seven years. This section should be read in connection with Punjab Government Notification No. 427-B, dated the 2nd October 1903, which further limits the Magistrate's discretion as to the period of detention he can order. It should, nevertheless, be borne in mind that a boy ordered to be detained in the Reformatory School for seven years will not necessarily be kept in the school for so long. He will in any case be discharged when he attains the age of 18 years. Besides this, the Local Government has discretion to order any youthful offender to be discharged at any time; and the Superintendent of the Reformatory School may license youthful offenders to employers of labour and may also apprentice any licensed youthful offender, under certain conditions and on being so apprenticed the youthful offender shall be discharged from the Reformatory School, the unexpired term of sentence being cancelled. **I**

VI. Besides the case of youthful offenders convicted by a Court or Magistrate of one of the offences specified (*vide* list subjoined to paragraph III of this circular) section 10 of the Reformatory Schools Act contemplates another case in which detention in the Reformatory School may be directed. This section gives the Superintendent of Jail power to produce before the District Magistrate any boy who is under the age of 15 years. In deciding whether any youthful offender brought to his notice in this manner should be sent to the Reformatory School, the District Magistrate will, of course, be guided by the rules made by the Local Government under section 8, sub-section (3), clause (*a*) of the Reformatory Schools Act, published as Punjab Government Notification No. 427-A dated the 2nd October 1903. Should the District Magistrate consider that the youthful offender, though not admissible to the Reformatory under those rules, is a proper person to be an inmate of the school, he must refer the case to the Local Government. **J**

VII. Magistrates should make free use of the provisions of the Whipping Act, of section 562 of the Code of Criminal Procedure, and of section 31 of the Reformatory Schools Act, in dealing with boys, and should refrain from sending boys to the Reformatory Schools in cases where they can be suitably dealt with under the foregoing provisions of the law. Boys sentenced to whipping and found unfit for it should be sent to the Reformatory School and not to jail. **K**

VIII. Under the Rules made by the Local Government for the classification, separation and daily employment of youthful offenders, boys detained

7.—"Local Governments....rules"—(*Concluded*).

F. Rules in Punjab.—(*Concluded*).

in a Reformatory School will be classed in two divisions, a senior and a junior and each division will be subdivided into two sub-divisions, A and B. The senior division will consist of boys above 14, and the junior division of boys under 14 years of age. Sub-division A will contain boys not in sub-division B, and sub-division B will contain (1) boys who by reason of previous offences, whether the subject of criminal prosecution or not, or of the character of their offence or the circumstances under which it has committed (offences against morals and serious or organized offences, whether against the property or against the person) appear to have marked criminal propensities; (2) boys who have been in jail, except those sent to jail under the proviso to section 12 of the Reformatory Schools Act temporarily (*i.e.*), detained in jail for want of accommodation in the Reformatory School; (3) boys whose parents are habitual criminals, and boys who have been subjected to family influences and surroundings which likely to prejudce to a life of crime.

In directing the detention in the Reformatory School, Magistrates should, with reference to this rule, record their opinion as to the sub-division in which the boy should be placed while under detention. **L**

IX. Where a Magistrate orders a boy to be detained in the Reformatory School, he should by telegram, ascertain, from the Superintendent thereof whether accommodation is available. If there is accommodation, the boy should be sent at once to the school; otherwise, he should be sent to the jail prescribed by the Local Government in Notification No. 426, dated 2nd October 1903, and the Superintendent of the Reformatory School should be informed of the jail to which he is sent or to which he may thereafter be transferred. **M**

X. The Hon'ble the Judges trust that the foregoing instructions will be observed strictly; Appellate, Revisional and Controlling Courts are specially enjoined to keep a watchful eye on subordinate Courts, and should report to this Court any Magistrate who disregards these instructions. 1903 Punj. Record, IInd Part. Executive Chief Court Circular Orders pp. 20 to 23. **N**

Procedure where Magistrate is not empowered to pass an order under section 8.

9. (1) When any Magistrate not empowered to pass an order under the last foregoing section is of opinion that a youthful offender convicted by him is a proper person to be an inmate of a Reformatory School, he may, without passing sentence, record such opinion and submit his proceedings and forward the youthful offender to the District Magistrate to whom he is subordinate.

(2) The Magistrate to whom the proceedings are so submitted[1] may make such further inquiry (if any) as he may think fit and pass such sentence and order for the detention[2] in a Reformatory School of the youthful offender, or otherwise, as he might have passed if such youthful offender had been originally tried by him.

(Old Act).

Act V of 1876—No corresponding provision.

(Notes).

1.—" Magistrate....submitted. "

Magistrate cannot transfer a case submitted to him.

A first class Magistrate who tries the case submitted his proceedings to the District Magistrate who then transferred the case to the sub-divisional Magistrate for disposal. The latter passed orders under this section. *Held* that the action of the District Magistrate and sub-divisional Magistrate was illegal. The orders of the District Magistrate and sub-divisional Magistrate were set aside and the District Magistrate was ordered to dispose of the case under sub-S. 2 of this section. 2 L.B.R. (1903-1904) 121. **O**

2.—" Sentence and order for detention. "

Section allows only commutation of sentence.

(*a*) The law requires that a Magistrate trying a case or one to whom the proceedings of the case are submitted under this section, should, in the first instance, sentence the accused to a term of imprisonment or transportation, which he may then commute into one of detention in a Reformatory School for such period as the law prescribes. 5 C.W.N. 210. **P**

(*b*) The language of S. 8 *supra* and this section shows that a sentence must first, in all cases of conviction, be passed and then a direction given that instead of undergoing the sentence, the youthful offender shall be sent to a Reformatory School. 1 Bom. L.R. 162. **Q**

(*c*) Thus, where the accused, a boy of 11 years, was convicted of theft by a third class Magistrate, who without passing a sentence, forwarded him to the District Magistrate as a person fit to be an inmate of a Reformatory School and the District Magistrate without passing any sentence, ordered him to be detained in the Reformatory School, the High Court directed the District Magistrate to pass a legal sentence and order. 1 Bom. L.R 162. **R**

Power of Magistrates to direct boys under sixteen sentenced to imprisonment to be sent to Reformatory Schools.

10. The officer in charge of a prison in which a youthful offender is confined, in execution of a sentence of imprisonment, may bring him, if he has not then attained the age of fifteen years[1], before the District Magistrate within whose jurisdiction such prison is situate; and such Magistrate may, if such youthful offender appears to be a proper person to be an inmate of a Reformatory School, direct that, instead of undergoing the residue of his sentence, he shall be sent to a Reformatory School, and there detained for a period which shall be subject to the same limitations as are prescribed by or under section 8, with reference to the period of detention thereby authorised.

(Old Act).

Act V of 1876.....S. 8.

(Notes).

1.—"Bring him....years."

(1) **Term of sentence expired—Interference by High Court.**

A second class Magistrate convicted the accused under S. 429, I.P.C., and sentenced him to two months' rigorous imprisonment and a fine. In the following month, the Superintendent of the prison informed the District Magistrate that the accused was about 14 years of age and seemed to be fit to be sent to the Reformatory School. The case was referred to a first class Magistrate for action under the Act. He directed the detention of the accused in the Reformatory School for 4 years. *Held* that the order of the first class Magistrate was illegal, that the order of the District Judge was also illlgal as Act V of 1876 had been repealed by the Superintendent, if treated as a bringing up of the prisoner, might have been legal under this section at the time he made it, if the convict was under 15 years of age but that as the term of sentence had expired, the High Court could not direct the District Magistrate to take action on it. B.H C. Cr. Rul. 45 of 1897. **S**

(2) **Offender in jail—Magistrate desiring to commute sentence into detention—Procedure.**

If a District Magistrate is of opinion that the sentence upon any juvenile offender should be changed into one of detention in a Reformatory, he should communicate with the offices in charge of the jail and request him to send the juvenile offender to be dealt with under this section. If he refuses to comply with such request, the District Magistrate should bring the matter to the notice of the Inspector-General of Prisons or before Government. B.H.C. Cr. Rul. 55 of 1889. **T**

Preliminary enquiry and finding as to age of youthful offender.

11. (1) Before directing any youthful offender to be sent to a Reformatory School under Section 8, section 9 or section 10, the Court or Magistrate shall inquire into the question of his age [1] and, after taking such evidence (if any) as may be deemed necessary [2], shall record a finding thereon [3], stating his age as nearly as may be [4].

(2) A similar inquiry shall be made and finding recorded by every Magistrate not empowered to pass an order under section 8 before submitting his proceedings and forwarding the youthful offender to the District Magistrate as required by section 9, sub-section (1).

(Old Act).

Act V of 1876.....No corresponding provision.

(Notes).

1.—"Shall inquire....age."

(1) **Magistrate's duty to decide exact age.**

(*a*) EXACT AGE WHEN UNNECESSARY.

In some cases, it is not necessary to ascertain the exact age of the boy. So long as he is not over fifteen, the Magistrate may rightly fix a period of three years, or if the boy is not over 11, he may safely fix a period of seven years without further enquiry. 24 M. 13. **U**

(*b*) WHEN NECESSARY.

(i) But if enquiry is necessary in order to fix the period as it would be when the boy is over eleven, and the Magistrate wishes to make the period as long as possible, then the Magistrate must find, as well as he can, the exact age of the boy, and he is not at liberty to leave the decision of the question to the Reformatory Officials. 24 M. 13. **V**

(ii) A Magistrate acting under this section is bound to ascertain the age of the prisoner, and in accordance with that finding to direct the confinement in the Reformatory according to the rules. It is not enough to simply find that the offender is under a particular age. 14 B. 381. **W**

2.—"After taking..necessary."

Some evidence as to age, if procurable, is necessary.

It is not that a Magistrate is under no circumstances competent to find from the appearance of a person convicted by him that he is a youthful offender within the definition given in the Act, but it is generally desirable that, when it is procurable, there should be some reliable evidence on the point, and especially when it may be necessary to determine the period of the detention which is limited to his attaining eighteen years of age. 27 C. 133. **X**

3.—"Shall record a finding thereon."

Definite finding as to age necessary.

Before an order for detention in a Reformatory School can be passed in lieu of a sentence for imprisonment, there should be a definite finding as to the age of the boy and as to his being a fit subject for a Reformatory. 3 C.W.N. 576 ; Rat. Unrep. Cr. C. 726 ; 1 Weir 879 ; 14 B. 381. **Y**

4.—"Stating his age..be."—

Age to be stated in the order of detention.

In order to give effect to the rules laid down by the Act in respect to the time and period of detention, the Magistrate is directed by this section to enquire into the question of age and after taking such evidence as may be deemed necessary, to record a finding thereon stating the boy's age as nearly as may be and the Magistrate is to state the age so ascertained in his order of detention. 24 M. 13. **Z**

Government to determine Reformatory School to which such offenders shall be sent.

12. Every youthful offender directed by a Court or Magistrate to be sent to a Reformatory School shall be sent to such Reformatory School as the Local Government may, by general or special order, appoint for the reception of youthful offenders so dealt with by such Court or Magistrate:

Provided that, if accommodation in a Reformatory School is not immediately available for such youthful offender, he may be detained in the juvenile ward or such other suitable part of a prison as the Local Government may direct.—

(*a*) until he can be sent to a Reformatory School, or

(*b*) until the term of his original sentence expires,

whichever event may first happen. Should the term of his original sentence first expire, he shall thereupon be released, but, should he be sent to a Reformatory School, then the period of detention previously undergone shall be treated as detention in a Reformatory School.

(Old Act).

Act V of 1876.....S. 9.

Proviso to the section is new.

Persons found to be over eighteen years not to be detained in Reformatory Schools.

13. (1) If at any time after a youthful offender has been sent to a Reformatory School it appears to the Committee of Visitors or Board of Management, as the case may be, that the age of such youthful offender has been understated in the order for detention, and that he will attain the age of eighteen years before the expiration of the period for which he has been ordered to be detained, they shall report the case for the orders of the Local Government.

(2) No person shall be detained in a Reformatory School after he has been found by the Local Government to have attained the age of eighteen years.

(Old Act).

Act V of 1876....S. 10, corresponds to sub-S. (2).

Sub-S. (1) is new.

Discharge or removal by order of Government.

14. The Local Government may at any time order any youthful offender—

(*a*) to be discharged from a Reformatory School;

(*b*) to be removed from one Reformatory School to another such school situate within the territories subject to such Government: Provided the whole period of his detention in a Reformatory School shall not be increased by such removal.

(Old Act).

Act V of 1876....S. 11.

Power to Governor General in Council to direct use of Reformatories in one province for reception of youthful offenders from another.

15. (1) [1] The Governor General in Council may by general or special order direct that any Reformatory School situated in one province shall be available for the reception of youthful offenders directed to be sent to any Reformatory School by any Court or Magistrate in any other province.

(2) Any such order may also provide for the removal of the youthful offender, and the cost of his maintenance, and may give any such further directions as may be necessary.

(Old Act).

Act V of 1876....No corresponding provision.

(Notes).

1.—"Sub-S. (1)."

Extension.

For the words "one province" substitute "British India."

For the words "any other province" substitute Hyderabad Assigned Districts, the Hyderabad Residency Bazars, the Cantonmen of Secundrabad, Hyderabad Cantonment.

For the words "any other province" substitute Stations of Aurangaabad
Bolarum.
Hingoli.
Jalna.
Mominabad.
Raichur and

For the words "any other province" substitute the Railway lands in the territories of His Highness the Nizam (other than the railway lands referred to in the Notification of the Government of India in the Foreign Department No, 4564-I dated the 18th November 1891 and No. 3244-I-B, dated the 26th August 1897). Government of India Notification No, 2779-I.B. 3 C.W. N. XVI.

Certain orders not subject to appeal or revision [3].

16. Nothing contained in the Code of Criminal Procedure, 1882, shall be construed to authorise any Court or Magistrate to alter or reverse in appeal or revision any order passed with respect to the age of a youthful offender [1] or the substitution of an order for detention in a Reformatory School for transportation or imprisonment [2]. X of 1882.

(Old Act).

Act V of 1876.....No corresponding provision.

(Notes).

General.

1. Section ambiguous—Construction.

"This section is not well drawn up, but apart from obvious verbal criticisms its object is clear enough..... It cannot be said that the section is unambiguous, but in such a case we are at liberty to put on it a construction in accordance with the intention of the legislature." Per Strachey, C.J., 21 A. 391. **A**

2. Scope of the section.

(*a*) This section does not exclude the exercise of appellate or revisional jurisdiction in all cases where a subordinate Court has ordered an offender to be detained in a Reformatory School. 21 A. 391 (**F.B.**) ; 6 Bom. L. R. 550. **B**

(*b*) The exclusion is limited to two specific matters in regard to which the legislature considered the Court trying a youthful offender better placed in arriving at a sound conclusion than an Appellate or Revisional Court. (20 A 160; 1 Bom. L. R. 162; 25 C. 333; 21 M. 430; 2 C. W. N. 572: 25 C. 852; 3 Q. B. D. 509, *R* ; 20 A. 158; 20 A. 159, *overruled*) ; 21 A. 391 (**F. B.**). **C**

(*c*) First is the age of the youthful offender, a finding on which is under S. 11, a necessary condition precedent to, every order for detention in a Reformatory School and which might often be difficult to determine and in determining which a subordinate Court which saw the offender would have considerable advantage over a superior Court which did not. (*Ibid.*) **D**

(*d*) Second is the substitution of an order for detention in a Reformatory School for transportation or imprisonment. (*Ibid.*). **E**

(*e*) This section cannot have been intended to enable the most junior Magistrate in the country to make at pleasure an order substituting detention in a Reformatory School for imprisonment in any case whatever for prisoners of any age or class or of either sex for any period of time in absolute disregard of the Act, without the possibility of correction. Per Strachey, J. 21 A. 391. **F**

(*f*) The order referred to in this section, which a Court or Magistrate has no authority to alter or reverse in appeal or revision, must be an order which the officer who made it was competent to make, and which he made in compliance with the provisions of this Act. 21 A. 391 (**F. B.**). **G**

(*g*) Where a Court or Magistrate has jurisdiction to make an order for detention in a Reformatory School in substitution for an order of transportation or imprisonment, and in the exercise of that jurisdiction the Court or Magistrate has made an order for detention in consonance with the provisions of Ss. 8, 9, 10. Such order is not open to interference in appeal or revision and is final. Per Banerji, J. 21 A. 391 (404). **H**

General—(*Concluded*).

(*h*) But where the order passed is not one justified by the Act and transgresses the provisions of the Act or the rules framed by the Local Government under the Act, this section does not protect it from interference in appeal or revision. Per Banerji, J. 21 A. 391 (404); 27 C. 133. **I**

(*i*) This section does not relieve an appellate Court of the duty of seeing whether a conviction or sentence passed on a youthful offender is maintainable according to law. 18 P.R. 1907 (Cr.)=43 P.W.R. 1907 =55 P.L R. 1908. **J**

1.—" With respect....offender."

(1) **Magistrate's finding as to age—How far final.**

The finding of a Magistrate regarding the age of a youthful offender ordered to be detained in a school is final in the sense that it cannot be altered on appeal or in revision. 24 M. 13; 7 Bur. L. R. 80; 1 Sind. 93; 6 Bom. L. R. 550. **K**

(2) **Magistrate understating the age—Interference by Government.**

But in case the Magistrate should have made a mistake and understated the age in the order for detention, it is competent to the local Government on the motion and report of the Commission of Visitors or Board of Management to order the removal of the boy if and when he is found to have attained the age of 18 years. 24 M 13. **L**

(3) **No finding as to age—High Court's interference.**

Where there is no clear finding as to the age of the accused, the High Court might interfere with such an order as one made without jurisdiction, either in appeal or in revision. 21 A. 391 (**F. B.**). **M**

2.—" Substitution....imprisonment."

(1) **Substitution of an order of detention for a sentence of imprisonment.**

This section does not entitle any appellate Court to order the alteration of the substitution of an order for detention in a Reformatory School to imprisonment 3 C.W.N. 576. **N**

(2) **Construction of words.**

The words "the substitution of an order for detention in a Reformatory School for transportation or imprisonment" are not very general and if read in the absolute literalness, would protect the most illegal order substituting detention for imprisonment, from any sort of interference. So to read them would defeat the plain intention of the legislature. They refer only to the propriety or suitableness of such substitution in the particular case, having regard to all circumstances. They do not include the legality of the substitution directed or the competency of the Court or Magistrate to direct it. Per Strachy, C. J. 21 A. 391. **O**

3.—" Certain orders....revision."

(1) **Extent of protection given by the section.**

(*a*) The protection afforded by the section only extends to the lawful exercise of the discretion vested in a Court or Magistrate to substitute detention in a Reformatory School for an order of transportation or imprisonment. Per Banerji, J. 21 A. 391. **P**

(*b*) This section does not affect the jurisdiction of a Court, as a Court of revision, to consider the legality or propriety of the conviction or sentence or of any order passed by a subordinate Court other than that mentioned in the section. 5 C.W.N. 210; 5 C.W.N. 211=28 C. 423. **Q**

3.—"Certain orders....revision"—(*Continued*).

(*c*) "The substituted orders to which the section refers are orders made under S. 8 or S. 10. not orders made outside the Act and wholly unauthorized by it. If the order is an order for substitution within the meaning of these sections then this section applies and the order cannot be altered or reversed in appeal or revision. If it is not an order for substitution within the meaning of these sections, then this section does not apply and it may be altered or reversed like any other illegal order." Per Strachey, C. J. 21 A. 391. **R**

(2) **Order subject to appeal or revision.**

(*a*) OFFENDER BELONGS TO A CLASS NOT WITHIN THE RULES.

(i) When the—passed under S. 8, *supra*, the order of detention is illegal and can be set aside. 27 C. 133. **S**

(ii) Thus, a boy of about 9 years of age was found in the compound of the Commissioner of Patna's residence at 3 A.M. one morning with brass lota which he stole from the side of a sleeping man. The case was tried summarily and the accused was sentenced to three months rigorous imprisonment or in lieu thereof to be detained in a Reformatory for 7 years. *Held* that the order was not properly passed, that the accused did not come within the definition of 'youthful offenders' as given in the Rules (Calcutta Gazette, Part I, p. 226, 1st March 1899) framed by the Local Government under S. 8 of the Act and that the offence of the accused being his first offence, the case should have been dealt with under S. 31, *infra*. 27 C. 133. **T**

(*b*) OFFENDER BELONGS TO A TRIBE EXEMPTED BY RULES.

When the youthful offender belongs to a tribe which is especially exempted by rules framed under the Act, the order for his detention is illegal and can be set aside. 21 A. 391 (**F.B.**) *overruling* 20 A. 158 ; 20 A. 159. **U**

(*c*) **No sentence passed—Mere order for detention**

This section does not preclude the High Court from interfering in revision with the order of a Magistrate directing the detention of the petitioner in Reformatory School when the petitioner had not been convicted of any offence and has not been sentenced to any term of imprisonment or transportation for which alone detention in a Reformatory School could be substituted. 21 A. 160 ; 5 C.W.N. 210 ; 1 Sind 72. **V**

(*d*) BOUND OVER TO KEEP PEACE, OR IN DEFAULT TO BE IMPRISONED—ORDER TO BE SENT TO REFORMATORY.

A youth of less than 16 was bound over to keep the peace for a period of one year or in default to be imprisoned for that period. The Magistrate sent up the papers to the District Magistrate who ordered his detention in a Reformatory School for 3 years. The High Court set aside the order detaining the accused in the Reformatory holding that it has jurisdiction to interfere when the accused is not sentenced to imprisonment or transportation and is still ordered to be detained in a Reformatory School, because he is ordered to furnish security to keep the peace or to suffer imprisonment in default. 7 Burma L.R. 80. **W**

(*e*) PERIOD OF DETENTION IS LESS THAN THE MINIMUM.

On 2nd March 1897, a second class Magistrate convicted a youthful offender of theft and sentenced him to imprisonment for one month. As the

3.—"Certain orders.....revision"—(Concluded).

medical officer of jail was of opinion that the boy was over 15 years of age, a first class Magistrate on the 11th idem, ordered his detention in a Reformatory School for two years and on the 18th idem increased the period of detention to 3 years. On the 5th April the accused appealed against the conviction to the Divisional Magistrate of first class, who on the 12th idem rejected the appeal on the ground that as the sentence under the Reformatory Schools Act 1876, was passed by a first class Magistrate, an appeal against that order lay to the Court of Sessions. The High Court set aside the order of the Divisional Magistrate of 12th April dismissing the appeal and directed him to dispose of the appeal according to Law. Rat. Unrep. Cr. C. 905. **X**

(*f*) ORDER OF A MAGISTRATE NOT SPECIALLY EMPOWERED.

The——, directing the detention of a youthful offender in a Reformatory School, being illegal is liable to be set aside by the High Court. Rat. Unrep. Cr.C. 936; *ibid.* 947; 12 M. 94. **Y**

(*g*) WHEN THERE IS NO CLEAR FINDING AS TO THE AGE OF THE ACCUSED.

See 21 A. 391.

(*h*) ACT NOT IN THE PLACE.

Where the accused on being convicted of theft under S. 379, I.P.C., was ordered to be placed in a Reformatory School for five years, the Punjab Chief Court, on the revision side, set aside the Magistrate's order as not authorized by law, inasmuch as Act V of 1876 was not in force in the Punjab, never having been extended by any Notification under S. 1 of the Act. 6 P.R. 1882 (Cr.). **Z**

III.—Management of Reformatory Schools.

Appointment of Superintendent and Committee of Visitors or Board of Management.

17. (1) For the control and management of every Reformatory School, the Local Government shall appoint either (*a*) a Superintendent and a Committee of Visitors, or (*b*) a Board of Management.

(2) Every Committee and every Board so appointed must consist of not less than five persons, of whom two at least shall be Natives of India.

(3) The Local Government may suspend or remove any Superintendent or any Member of a Committee or Board so appointed.

(Old Act).

Act V of 1876.....S. 12.

Superintendent may license youthful offenders to employers of labour.

18. (1) Every Superintendent so appointed may, with the sanction of the Committee, by license under his hand, permit any youthful offender sent to a Reformatory School, who has attained the age of fourteen years, to live under the charge of any trustworthy and respectable person named in the license, or any officer of

Government or of a Municipality, being an employer of labour and willing to receive and take charge of him, on the condition that the employer shall keep such youthful offender employed at some trade, occupation or calling.

(2) The license shall be in force for three months and no longer, but may, at any time and from time to time until the expiration of the period for which the youthful offender has been directed to be detained, be renewed for three months at a time.

(Old Act).

Act V of 1876... . S. 13.

Cancellation of license.

19. The license shall be cancelled at the desire of the employer named in the license.

(Old Act).

Act V of 1876 .....S. 14 (1).

Determination of license.

20. If during the term of the license the employer named therein dies, or ceases from business or to employ labour, or the period for which the youthful offender has been directed to be detained in the Reformatory School expires, the license shall thereupon cease and determine.

(Old Act).

Act V of 1876.....S. 15.

Cancellation of license in case of ill-treatment.

21. If it appears to the Superintendent that the employer has ill-treated the youthful offender, or has not adequately provided for his lodging and maintenance, the Superintendent may cancel the license.

(Old Act).

Act V of 1876.....S. 16.

Superintendent to be deemed guardian of youthful offenders.

22. (1) The Superintendent of a Reformatory School shall be deemed to be the guardian of every youthful offender detained in such school, within the meaning of Act No. XIX of 1850 (*concerning the binding of apprentices*).

Power to apprentice youthful offender.

(2) If it appears to the Superintendent that any youthful offender licensed under section 18 has behaved well during one or more periods of his license, the Superintendent may, with the sanction of the Committee, apprentice him under the provisions of the said Act, and on such apprenticement the right to detain such youthful offender in a Reformatory School shall cease and the unexpired term (if any) of his sentence shall be cancelled.

(Old Act).

Act V of 1876.....S. 17.

Duties of Committee of Visitors.

23. (1) Every Committee of Visitors appointed under Section 17 for a Reformatory School shall, at least once in every month,—

(*a*) visit the school, to hear complaints and see that the requirements of section 6 have been complied with, and that the management of the school is proper in all respects ;

(*b*) examine the punishment-book ;

(*c*) bring any special cases to the notice of the Inspector-General ; and

(*d*) see that no person is illegally detained in the school.

(2) If any member of a Commiteee of Visitors so appointed fails or neglects, during a period of six consecutive months, to visit the school and assist in the discharge of the duties aforesaid, he shall cease to be a member of such Committee.

(Old Act).

Act V of 1876.....S. 18.

Sub-S. (2) is new.

Powers of Board of Management.

24. If, in exercise of the power conferred by section 17, the Local Government appoints a Board of Management for any Reformatory School, such Board shall have the powers and perform the functions of the Superintendent under sections 18 to 22, both inclusive ; and the license mentioned in section 18 may be under the hand of their chairman ; and they shall be deemed to be the guardians of the youthful offenders detained in such school.

(Old Act).

Act V of 1876....S. 19.

Power to appoint Trustees or other Managers of a school to be a Board of Management.

25. The Local Government may declare any body of Trustees or Managers of a school, who are willing to act in conformity with the rules referred to in section 5, clause (*b*), to be a Board of Management under this Act, and thereupon such body or Managers shall have all the powers and perform all the functions of such Board of Management.

(Old Act).

Act V of 1876....S. 20.

Power of Board to make rules.

26. (1) With the previous sanction of the Local Government, every Board of Management of a Reformatory School may from time to time make rules consistent with this Act—

(*i*) to prescribe the articles which are to be deemed to be "prohibited articles"; and

(*ii*) to regulate—

(*a*) the conduct of business of the Board;

(*b*) the management of the school;

(*c*) the education and industrial training of youthful offenders,

(*d*) visits to, and communication with, youthful offenders;

(*e*) the terms and conditions under which any articles declared by the Board to be "prohibited articles" may be introduced into or removed out of the school;

(*f*) the manner in which such articles are to be removed when introduced without due authority;

(*g*) the conditions and limitations under which such articles may be supplied outside the school to any youthful offender under order of detention therein;

(*h*) the conditions on which the possession by any such youthful offender of such articles may be sanctioned;

(*i*) the penalties to be imposed for the supply or possession of such articles when supplied or possessed without due authority;

(*j*) the punishment of offences committed by youthful offenders; and

(*k*) the granting of licenses for the employment of youthful offenders.

(2) In the absence of a Board of Management the Local Government may make rules consistent with this Act to regulate for any Reformatory School the matters mentioned in any clause of sub-section (1), other than clause (*ii*) (*a*), and also the mode in which the Committee of Visitors shall conduct their business.

(Old Act).

Act V of 1876....S. 21.

Sub-S. (1), cl. I and II (*e*) to (*i*) are new.

IV.—Offences in relation to Reformatory Schools.

Penalty for introduction or removal or supply of prohibited articles and communication with youthful offenders.

27. Whoever, contrary to any rule made under section 26, introduces or removes or attempts by any means whatever to introduce or remove into or from any Reformatory School, or supplies or attempts to supply outside the limits of any Reformatory School to any youthful offender under order of detention therein, any prohibited article,

and every officer or person in charge of a Reformatory School who, contrary to any such rule, knowingly suffers any such article to be introduced into or removed from any Reformatory School, to be possessed by any youthful offender detained therein, or to be supplied to any such youthful offender outside its limits,

and whoever, contrary to any such rule, communicates or attempts to communicate with any such youthful offender,

and whoever abets any offence made punishable under this section,

shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

(Old Act).

Act V of 1876....No corresponding provision.

Penalty for abetting escape of youthful offender.

28. Whoever abets an escape, or an attempt to escape, on the part of a youthful offender from a Reformatory School, or from the employer of such youthful offender, shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding two hundred rupees, or with both.

(Old Act).

Act V of 1876 ...S. 23.

Arrest of escaped youthful offender.

29. A Police-officer may, without orders from a Magistrate and without a warrant, arrest any youthful offender sent to a Reformatory School under this Act, who has escaped from such school or from his employer, and take him back to such school or to his employer.

(Old Act).

Act V of 1876....S. 24.

V.—Miscellaneous.

Application of Act XV of 1869 to youthful offenders detained in Reformatory Schools.

30. Rep. Act III of 1908.

(Old Act).

Act V of 1876....No corresponding provision.

Power to deal in other ways with youthful offenders, including girls.

31. (1) Notwithstanding anything contained in this Act or in any other enactment for the time being in force, any Court may, if it shall think fit, instead of sentencing any youthful offender to transportation or imprisonment or directing him to be detained in a Reformatory School, order him to be—

(*a*) discharged after due admonition, or

(*b*) delivered to his parent or to his guardian or nearest adult relative, or such parent, guardian or relative executing a bond [1], with or without sureties, as the Court may require, to be responsible for the good behaviour of the youthful offender for any period not exceeding twelve months.

(2) For the purposes of this section the term "youthful offender" shall include a girl.

(3) The powers conferred on the Court by this section shall be exercised only by Courts empowered by or under section 8.

(4) When any youthful offender is convicted by a Court not empowered to act under this section and the Court is of opinion that the powers conferred by this section should be exercised in respect of such youthful offender, it may record such opinion and submit the proceedings and forward the youthful offender to the District Magistrate to whom such Court is subordinate.

(5) The District Magistrate to whom the proceedings are so submitted may thereupon make such order or pass such sentence as he might have made or passed if the case had originally been tried by him.

(Old Act).

Act V of 1876....No corresponding provision.

(Notes).

1.—"Instead of....bond."

After inflicting whipping, no bond should be taken.

This section enables the Court to make an order of discharge after due admonition or to deliver the youthful offender to his parents on their giving a bond instead of sentencing him to transportation or imprisonment or directing his detention in a Reformatory School and it does not permit a bond being given after the whipping has been inflicted. 3 L.B.R. 30. **A**

Procedure when youthful offender under detention in a Reformatory School is again convicted and sentenced.

32. When a youthful offender during his period of detention in a Reformatory School is again convicted by a Criminal Court, the sentence of such Court shall commence at once, notwithstanding anything to the contrary in section 397 of the Code of Criminal Procedure, 1882, but the Court shall forthwith report the matter to the Local Government, which shall have power to deal with the matter in any way in which it thinks fit.

(Old Act).

Act V of 1876....No corresponding provision.

THE REFORMATORY SCHOOLS ACT, 1897.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this volume and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—O. and R. in Brevier Roman denotes the Order and Rule.

A

Abetment, Penalty for abetting escape of youthful offenders, S. 28, **34.**

Age, Under Whipping Act, *I*, **8.**

Preliminary enquiry and finding as to, of youthful offender, S. 11, **22, 23.**

Magistrate's duty to decide exact, *U—W*, **23.**

Some evidence as to, if procurable, is necessary, *X*, **23.**

Definite finding as to, necessary, *Y*, **23.**

to be stated in order of detention, *Z*, **23.**

Magistrate's finding as to, how far final, *K*, **27.**

Magistrate undertaking—Interference by Government, *L*, **27.**

No finding as to High Court's interference, *M*, **27.**

Appeal, Certain orders not subject to, or revision, S. 16, **25—29.**

construction of S. 16, *A*, **26.**

Scope of S. 16, *B—J*, **26, 27.**

Order subject to, or revision, *S*, *T*, **27.**

Arrest, Of escaped youthful offenders, S. 29, **35.**

Assam, Rules made by Local Government, *re* youthful offenders in, *B—D*, **17.**

B

Bengal and Assam, Rules made by Local Government, *re* youthful offenders in, *Q—T*. **14, 15.**

Board of management, Power of, S. 24, **31.**

Power to appoint trustees or other Managers to be, S. 25, **31.**

Power of Board of management to make rules, S. 26, **32.**

Burma and Shan States, Rules made by Local Government, *re* youthful offenders in, *A*, **17.**

C

Central Provinces, Rules made by Local Government, *re* youthful offenders in, *X*, *Y*, **16.**

Committee of visitor's, Duties of, S. 23, **31.**

Commutation of sentence, S. 9 of the Act allows only, *P—R*, **21.**

Cr. P. C., 1882, S. 399 extent of the repeal of, *D*, **6.**

repeal of Act V of 1876 does not revive, *E*, **6.**

combined effect of Act V of 1876, and, *F*, *G*, **7.**

S. 399, repealed on date fixed by a notification S. 1, Sub-S. 3 of this Act, S. 3, **6, 7.**

Cr. P. C., 1898, Ss. 4 and 435—Proceedings under S. 8 of the Act, judicial proceedings, *M, N*, **14**.

S. 562, difference in procedure, under, and S. 8 of the Act, *N*. **11**.

D

Detention, Substitution of an order of—for a sentence of imprisonment, *W*, **27**

in Reformatory schools, See REFORMATORY SCHOOLS.

District Magistrate, Defined, S. 4, **7**.

G

Government, to determine Reformatory schools to which youthful offender shall be sent S. 12, **23**, **24**.

H

High Court. Term of sentence expired—Interference by, S. 22.

I

Inspection, of Reformatory schools, S. 7, **9**.

Inspector-General, Scope of the term, S. 4, **7**.

J

Judicial proceeding, Proceeding under S. 8 of this Act, a, *M, N*. **14**.

Jurisdiction, of Magistrates—Age of offender, *J*, **7**.

Juvenile offender, Every, should be sent to Reformatory. *Q, R*, **11**.

L

License. Superintendent may license youthful offenders to employers of labour, S. 18, **29**, **30**.

Cancellation, S. 19, **30**.

Determination, S. 20, **30**.

Cancellation of in case of ill-treatment, S. 21, **30**.

Local Government, may make rules for defining what youthful offenders should be sent to Reformatory schools. etc.. and for regulating periods of detention, S. 8, **9**—**19**, **14**.

See also under RULES.

M

Madras and Bombay, Rules made by Local Government, *re* youthful offenders in, *U*—*W*, **15**.

Magistrates, What, specially empowered to exercise power conferred by, S. 8, *G, H*, **13**.

Order by, not specially empowered illegal, *I, J*, **13**.

P

Penalty, for introduction or removal or supply of prohibited articles and communication with youthful offenders, S. 27, **33**.

for abetting escape of youthful offenders, S. 33, **33**.

Procedure, Power of Court of appeal to order for detention in lieu of imprisonment, *K, L*, **13**, **14**.

where there is evidence of age, *K*, **14**.

where there is no evidence of age, *L*, **14**.

Procedure—(Concluded).

Magistrate cannot transfer a case committed to him, *O*, **21.**

Where Magistrate is not empowered to pass an order under S. 8, S. 9, **20**, **21.**

Offender in jail—Magistrate desiring to commute sentence into detention, *T*, **22.**

After inflicting whipping no bond should be taken, *A*, **35.**

When youthful offenders under detention in Reformatory Schools again convicted and sentenced, S. 32, **35.**

Punjab, Rules made by Local Government, *re* youthful offenders in, *E—K*, **6.**

R

Reformatories, Places declared to be, under the Act, *K*, **8.**

Power to Governor-General-in-Council to direct use of, in one Province for reception of youthful offenders from another, S. 15, **25.**

Reformatory Schools, power to establish and discontinue, S. 5, **8.**

Requisites of schools, S. 6, **9.**

Inspection of, S. 7, **9.**

Time of detention in, *Y*, **12.**

Magistrate to state the exact period of detention in, *Z*, **12.**

Minimum period of detention in, *A*,*B*, **12.**

Order directing a boy of 11 years to be detained for 5 years in, legal, *C*, **12.**

Offender over 13 years—Period of detention in, *D*, **13.**

Offender over 14—Detention in, for 2 years, *E*, **13.**

Offender under 16—Detention in, for 3 years, *E*, **13.**

Power of a Court of appeal to order for detention in, in lieu of imprisonment, *K*, *L*, **13**, **14.**

Inmate of, not to be associated with convicts of serious offences, *S*, **11.**

Direction for detention in, should be passed only after sentence. *T*, **11.**

Power of Courts to direct youthful offender to be sent to, S. 8, **9—19.**

Course to be adopted under, S. 8, *V*, **11.**

Power of Magistrate to direct boy under sixteen sentenced to imprisonment to be sent to, S. 10, **21**, **22.**

Government to determine, to which youthful offender shall be sent, S. 12, **20**, **24.**

Persons found to be over 18 years not to be detained in, S. 13. **24.**

Discharge or removal of youthful offenders from, by order of Government S. 14, **24.**

Management of, Ss. 17—27, **29—32.**

Offences in relation to, Ss. 27—32, **33—35.**

Repeal, of Act V of 1876. see S. 2, **5**, **6.**

Source of S. 2, *A*, **6.**

Rules framed under Old Act, whether in force after the passing of the Act, *C*, **6.**

Rules, Power to make, for defining what youthful offenders should be sent to Reformatory schools, etc., and for regulating periods of detention. S. 8. **9—19.**

In Bengal and Assam, *Q—T*, **14**, **15.**

In Madras and Bombay, *U—W*, **15.**

In United provinces, *X*, *Y*, **15**, **16.**

In Burmah (except in Shan States), *A*, **17.**

In Assam, *B—D*, **17.**

In the Punjab, *E—N*, **17—20.**

Revision, Certain orders not subject to appeal or S. 16, **25, 26** ; construction of S. 16, *A*, **26**; Scope of, S. 16, *B—J*, **26, 27**.

Order subject to appeal or, *S*, 28.

S

Sentence, Juvenile offender whom it is desirable to confine in Reformatory—must be passed on conviction, *M*, **10**.

ought to be self contained, *N*, *O*, **10**.

bound over to keep peace in default of imprisonment, no, **10**.

No—Mere order for detention—Illegality, *W*, **11**.

No, passed—Mere order for detention, *V—Z*, **28, 29**.

Superintendent, Power to apprentice youthful offenders, S. 22, **30**.

May license youthful offenders to employers of labour, S. 18, **29, 30**.

To be deemed guardian of youthful offenders, S. 22, **30**.

T

Title, Commencement and extent of Act, S. 1, **5**.

U

United Provinces, Rules made by Local Government, re youthful offenders in, *Z*, **16**.

W

Whipping, After inflicting, on youthful offenders no bond should be taken, *A*, **35**.

Whipping Act, Juvenile offender in, meaning of, *I*, **8**.

Y

Youthful offender, defined, S. 4, **7, 8**.

Record must show that boy is under 15, *H*, **7**.

Age under the Whipping Act, *I*, **8**.

Jurisdiction of Magistrate—Age of offender, *J*, **8**.

Power of Courts to direct, to be sent to Reformatory School, S. 8, **9—19**.

Course to be adopted under, S. 8, *V*, **11**.

Discharge or removal of, from Reformatory School by order of Government, S. 14, **24**.

Power to Governor-General in Council to direct use of Reformatories in one Province for reception of, from another, S. 15, **25**.

Preliminary enquiry and finding as to age of, S. 11, **22, 23**.

Penalty for abetting escape of, S. 28, **33** ; Penalty for introduction or removal or supply of prohibited articles and communication with, S. 27, **33**.

Arrest of, S. 29, **33**.

for purposes of S. 31 of the Act, include girls, S. 31, **34**.

Power to deal in other ways with, including girls, S. 31, **34**.

Procedure when, under detention in a Reformatory school are again convicted and sentenced, S. 32, **35**.

THE LAWYER'S COMPANION SERIES.

THE EXCISE ACT, 1896

(ACT XII OF 1896)

(WITH THE CASE-LAW THEREON)

BY

T. V. SANJIVA ROW,

FIRST GRADE PLEADER, TRICHINOPOLY.

(AUTHOR OF A "DIGEST OF PRIVY COUNCIL RULINGS,"
THE "CURRENT INDEX OF INDIAN CASES,"
THE "LAWYER'S REFERENCE,"
AND
THE "INDIAN EVIDENCE ACT.")

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THE EXCISE ACT, 1896.

TABLE OF CASES NOTED IN THIS ACT

		PAGE
	I. L. R. Allahabad Series.	
1 A 630 (634, 635) .	Empress of India v. Seymour	25, 26, 43, 44, 45, 46 and 51
1 A 635 (636) ...	——— v. Dharam Das	... 44
1 A 638 (639), (641, 642) ...	Empress of India v. Mahindra Lal	...25, 26, 44, 53
3 All 404 (405, 407).	Empress of India v. Hait Ram	...14, 29, 30, 46
10 All 577 (580) ...	Debi Prasad v. Rup Ram	15, 23, 25, 39, 50 and 51
20 A 70 (72) ...	Queen-Empress v. Makunda	... 34, 37, 56
22 A 441 ...	Madho Pershad, *In re*	... 25, 40, 43
25 A 262 ...	Emperor v. Gajadhar	... 48
30 A 377 ...	——— v. Lachmi Narain	... 56
31 A 293 ...	——— v. Panna Lal	... 46
	I. L. R. Bombay Series.	
12 B 422 ...	Hormasji Motabhai v. Pestanji Dhanjibhai	... 25
	I. L. R. Calcutta Series.	
8 C 214 (216) ...	The Empress v. Kola Lalang	... 9
9 C 223 ...	Henry Kyte, *In the matter of the petition of*	... 48
16 C 436 (437), (440).	Boistub Churn Naun v. Wooma Churn Sen	7, 8, 25 and 39
17 C 566 ...	Queen-Empress v. Harridas San	... 46
31 C 798 (804) ...	Behari Lall Shaha v. Jagodish Chunder Shaha	... 7, 23 and 25
	Allahabad Law Journal.	
5 A L J 357 ...	Janki Das v King-Emperor	... 37
5 A L J 444 ...	King-Emperor v. Lachmi Narain	... 56
6 A L J 238 ...	Panna Lal v. King-Emperor	... 46
	Allahabad Weekly Notes.	
1883 A W N 238 ...	Empress v. Ajaib	... 23, 46
1884 A W N 213 ...	——— v. Ganeshi	... 13, 19, 42
1888 A W N 215 (216) ...	Debi Prasad v. Rup Ram	...15, 16, 23, 51
1894 A W N 201 ...	Queen-Empress v. Gumna	... 23, 43
A W N (1896) 105...	——— v. Ram Charan	... 38, 56
(1897) A W N 162...	——— v. Makunda	... 56
A W N (1902) 17 ...	King-Emperer v. Bakir	... 46
1906 A W N 314 ...	Jugal Kishore v. Mul Chand	... 27
A W N (1908) 95 ...	Emperor v. Janki Das	... 37
A W N (1908) 157...	Emperor v. Lachmi Narain	... 56
	The Calcutta Weekly Notes.	
1 C W N 1 ...	Emperor v. Gones Chandra Sikdar	... 13
4 C W N 245 (246)...	Hridoy Mondal v. Jagananda Das	... 34, 35, 36
10 C W N 220 ...	Mohadeo Misser v. Narayan Ram Sha	... 57
12 C W N 139 ...	Golap Saha v. The Emperor	... 42

			PAGE
		Sutherland's Weekly Reporter.	
19 W R 34 (Cr)	...	Ishur Chunder Shaha ...	51
21 W R 289	...	Judoonath Shaha, *In re* ...	15, 25
		The Punjab Record.	
9 P R 1870 (Cr)	...	Crown v. Gunga Ram ...	13
15 P R 1870 (Cr)	...	Ram v. The Crown ...	57
23 P R 1870 (Cr)	...	Raj Kishen v. The Crown ...	59
6 P R 1872 (Cr)	...	The Crown v. Polu ...	50
6 P R 1877 (Cr)	...	——— v. Nihal Singh ...	58
12 P R 1878 (Cr)	...	Puran v. The Crown ...	48, 56
19 P R 1878 (Cr)	...	Rallia v. The Crown ...	43
15 P R 1887	...	Chatra v. Empress ...	56
4 P R 1893	...	Dewa Singh v. Queen-Empress ...	56
9 P R 1897	...	Pirag v. Queen-Empress ...	56
1897 P R No. 13	...	Empress v. Salaru ...	48
22 P R 1900 (Cr)	...	——— v. Chet Singh ...	56
8 P R 1901 (Cr)	...	Queen-Empress v. Sundar Singh ...	56
10 P R 1901 (Cr)	..	——— v. Wazir Singh ...	30, 48
55 P R 1905 Cr	...	King-Emperor of India v. Mukhtar Khan ...	58
14 P R No. 1907 (Cr J)	...	Sher Singh v. King-Emperor ...	41
		The Punjab Law Reporter.	
201 P L R 1905	...	The King-Emperor of India v. Mukhtar Khan ...	58
		The Punjab Weekly Reporter.	
2 P W R 1907	...	Bhagat Singh v. The Crown ...	40, 46
		Central Provinces Law Reports.	
5 C P L R 44 (Cr)	...	Empress v. Sumer and Pangat ...	47
11 C P L R 62 (63) (Civ)	...	Bakhto Behra v. Bainchha Behra ...	62
		Nagpur Law Reports.	
1 N L R 81	...	Emperor v. Rustomji Pestomji ...	51
		Oudh Cases.	
3 O C 79	...	Babu Singh v. Patan Din ...	33
		Lower Burma Rulings.	
L B R (1872-1892) 146 (184)	...	Mi The U v. Queen-Empress ...	47, 57, 58
L B R (1872-1892) 337	...	Queen-Empress v. Nga Ya Po ...	51
L B R (1872-1892) 350 (353)	...	——— v. Nga Ta Lok ...	40
L B R (1872-1892) 373 (374) (375) (377)	...	——— v. Ah Shein and Ah Yin ...	24, 52, 54
L B R (1872-1892) 571 (572)	...	——— v. Nga Lu Gale ...	13, 49
L B R (1893-1900) 336	...	——— v. Nga Shwe Hwan ...	60

	Lower Burma Rulings—(*Concluded*).		PAGE
L B R (1893-00) 405 ...	Queen-Empress v. Rajia	...	49
L B R P J (1893-1900) 489 ...	Ah Sin, or Ah Sai v. Queen-Empress	...	43
L B R (1893-1900) 633 ...	Queen-Empress v. Nga Ba O	...	50
L B R (Printed Judgments) 1897 369 ...	——————— v. Nga Taw Aung	...	57
L B R (1900—1902) Vol. I 3 (4) ...	——————— v. Tagarajan	...	41
L B R (1900—1902) Vol. I 33 ...	——————— v. Aw Wa and Tan Win	...	40
L B R (1900—02) Vol. I 172 ...	Crown v. Pya Gyi	...	12, 49
L B R (1900—1902) Vol. I 214 (Cr) ...	——— v. Than Nyin	...	15, 39, 49
L B R (1900—1902) Vol. I 308 (310) ...	——— v. La Pyu	...	40
L B R (1903 - 04) Vol. II 136 ...	Ma Pi v. King-Emperor	...	48
4 L B R 121 ...	Mi Hank v. King-Emperor	...	35
5 L B R 52 (**F B**) ...	King-Emperor v. Maung Pwa	...	31, 32
	Upper Burma Rulings.		
U B R (1892—1896) Excise 87 (90) ...	Queen-Empress v. Ah Yin	...	14, 28, 30, 31
U B R (1892—96) Vol. I Excise 92 ...	——————— v. Mi Cho and Nga San Bu	...	48
U B R (1892—1896) Vol. I 93 ...	——————— v. Po Tu	...	40
U B R (1892—1896) Vol. I 95 (96) ...	——————— v. Ah Yu Shok	...	25, 45
U B R (1892—1896) Vol. I 97 ...	——————— v. Hin Wun	...	31
U B R (1892 -96) Vol. I 98 ...	——————— v. Nga On Cho	...	48
U B R (1892—96) Vol. I 100 ...	———————————	...	45, 53
U B R (1892—1896) Vol. I Page 101 ...	Ashe v. Queen-Empress	...	45, 47
U B R (1892—96) Vol. I 103 ...	Atoi v. ———————	...	47
U B R (1892—1896) Vol I 105 ...	Queen-Empress v. Apalu	...	45

	Upper Burma Rulings—(*Concluded*).	PAGE
U B R (1892—96) Vol. I 107 (108) ...	Queen-Empress v. Nga Po Kywe ...	45, 47, 49
U B R (1892—96) Vol. I 109 (110) ...	Isang Waw v. Queen-Empress ...	51, 54
U B R (1892—96) Vol I 111 ...	Queen-Empress v. Ma Min Thon ...	56
U B R (1892—96) 139	——— ——— v. Pin Ye and Ah Lian ...	48
U B R (1897—1901) Vol. I (Cr) 178 (179 and also 184) ...	Pir Mahomed Gafur and M. S. Wilks v. Queen-Empress ...	24, 52, 53
U B R (1897—(1901) Vol. I Cr 182, (183) ...	Ah Hin v. Queen-Empress ...	34, 37, 56, 57
U B R (1897—1901) Vol. I (Cr) 184 ...	Queen-Empress v. Ahyu ...	24
U B R (1897—1901) Vol I 187 (188) ...	——— ——— v. A. Fut ...	53
U B R (1897—1901) Vol. I (Cr) 189 (191) ...	A. Hein v. Queen-Empress	23, 44, 45, 50, 51
U B R (1902—03) Vol. I (Cr) Excise 1 ...	Abdool v. King-Emperor ...	52, 53
U B R (1905) Excise 3 ...	King-Emperor v. Mi Thit ...	39
U B R (1905) Excise 5 ...	——. ——— v. Nga Beik Kyi ...	40
U B R (1909) Excise 1 ...	V.R. Venkataraman Chetty v. King-Emperor ...	13, 48, 49
U B R (1909) Excise 7 ...	King-Emperor v. Nga Chi ...	30, 31
	The Indian Cases.	
2 Ind Cas 192 ...	Panna Lal v. Emperor ...	46
2 Ind Cas 543 Excise 7 ...	Emperor v Maung Pwa ...	31
	The Criminal Law Journal.	
3 Cr L J 135 ...	Emperor v. Mukhtar-Khan ...	58
3 Cr L J 196 ...	Mohadeo Misser v. Narayan Ram Sha ...	57
7 Cr L J 393 ...	Emperor v. Tanki Das ...	37
8 Cr L J 5 ...	——— v. Lachmi Narain ...	56
Cr L J 503 ...	Panna Lal v. Emperor ...	46
	The English Cases.	
18 L J C 9 ...	Ditchie v. Smith ...	15
17 L J C 311 ...	Gundell v. Dawson ...	15
6 C B 462 ...	Ritchie v. Smith ...	25
15 L J C Exch 149.	Smith v. Mawhood ...	15
23 L J Exch 254 ...	Taylor v. The Growlaad Gas and Coke Co. ...	15

THE EXCISE ACT, 1896.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Title, local extent, and commencement.
2. Repeal.
3. Definitions.
4. Saving of Acts XVI. of 1863 and XIII. of 1889.

CHAPTER II.

PRODUCTION OF SPIRIT AND FERMENTED LIQUOR.

5. Manufacture of spirit and liquor without license prohibited.
6. Power to establish distilleries for country spirit.
7. Duty on spirit.
8. Duty on fermented liquor.
9. Power for Chief Revenue-authority to make rules as to distilleries and breweries licensed under section 5.
10. Power for Chief Revenue-authority to make rules for distilleries established under section 6.
11. Sanction to rules under sections 9 and 10.

CHAPTER III.

CULTIVATION AND CONTROL OF INTOXICATING DRUGS.

12. Prohibition, restriction, and regulation of cultivation of hemp and production of intoxicating drugs.
13. Duty on cultivation of hemp and intoxicating drugs.
14. Establishment and licensing of bonded and other warehouses and levy of duty on intoxicating drugs on issue therefrom.
15. Payment of warehouse-dues.
16. Period during which intoxicating drugs may remain warehoused.
17. Power to remove intoxicating drugs from one warehouse to another.
18. Possession of intoxicating drugs.
19. Power for Local Government to make rules.
20. Power for Collector or other authorized officer to grant licenses and passes for the possession or transport of intoxicating drugs and for Chief Revenue-authority to make rules.

CHAPTER IV.

SALE OF SPIRIT, FERMENTED LIQUOR, AND INTOXICATING DRUGS.

SECTIONS.

21. Spirit, fermented liquor, and intoxicating drugs not to be sold without license.
22. Licenses how granted and cancelled.
23. Further power to cancel licenses.
24. Surrender of retail license.
25. Power for Collector to farm fees and for farmer to grant licenses.
26. Farm may be cancelled.
27. Compensation to farmers in certain cases.
28. Recovery of arrears by farmers.
29 Power for Chief Revenue-authority to regulate supply of tàrì to licensed vendors.

CHAPTER V.

POSSESSION AND IMPORT OF SPIRIT AND FERMENTED LIQUOR.

30. Possession of spirit, &c.
31. Spirit and fermented liquor from foreign territory subject to duty.
32. Spirit and fermented liquor from territory beyond India subject to duty.

CHAPTER VI.

OFFICERS AND THEIR POWERS.

33. Collectors may appoint Excise-officers.
34. Recovery of arrears of fees.
35. Power of Excise-officers to inspect shops.
36. Power of Excise-officers to arrest persons carrying spirit, &c., liable to confiscation.
37. Power of Excise-officers to arrest persons in possession of article liable to confiscation, and to seize article.
38. Power of Excise-officers to search on information of illicit manufacture or possession.
39. Collector may issue warrant of arrest in certain cases.
40. Collector may issue search-warrant.
41. Excise-officer to report arrest, &c., and to take person arrested to Magistrate.
42. Procedure after arrest or seizure.
43. Police to aid Excise-officers.
44. Power for Local Government to invest Police-officers with powers of Excise-officers.

CHAPTER VII.

PENALTIES.

SECTIONS.

45. For illegally manufacturing spirit or liquor.
46. For illegally introducing country spirit.
For illegally removing spirit or fermented liquor.
For illegally importing spirit or fermented liquor.
For importing spirit, fermented liquor, or intoxicating drug without paying duty.
47. For contravening rules prescribed by Chief Revenue-authority.
48. For illegally cultivating hemp or collecting the spontaneous growth of hemp, or preparing, possessing, importing, exporting, or transporting intoxicating drugs.
49. For illicitly selling spirit, &c.
50. For permitting drunkenness, &c., in shop.
51. For illegally possessing spirit or liquor.
52. For refusing to produce license and for breach of rules and conditions.
53. For conniving at illicit manufacture or sale of spirit, &c.
54. For Police neglecting to aid Excise-officers.
55. For vexatious search or seizure.
56. For delay in reporting arrest, &c., or in taking person arrested to Magistrate.
57. Prosecutions restricted.
58. Confinement in what jail.
59. Attempts and abetment.
60. Disposal of fines, &c., as rewards.
61. Magistrate to pass order of confiscation.

CHAPTER VIII.

MILITARY CANTONMENTS.

62. Manufacture and sale of spirits, &c., in military cantonments.
63. Application of Act to military cantonments.

CHAPTER IX.

MISCELLANEOUS.

64. Collector subject to control of Commissioner.
65. Additional power for Chief Revenue-authority to make rules.
66. Power for Local Government to exempt articles and persons.

THE EXCISE ACT, 1896.

ACT No. XII. OF 1896.

(APPLIES ALSO TO THE NORTH-WEST FRONTIER PROVINCE.)

An Act to amend the Law relating to the Excise-revenue in force in Northern India, Burma, and Coorg.

WHEREAS it is expedient to amend the law in force in Northern India, Burma, and Coorg relating to the production, sale, possession, and import of spirit, fermented liquors, and intoxicating drugs, and the collection of the revenue derived therefrom; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Title, local extent, and commencement.

1. (1) This Act may be called "The Excise Act, 1896 [1]."

(2) It extends to the territories administered respectively by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh, the Lieutenant-Governor of the Punjab, and the Chief Commissioners of the Central Provinces, Burma [2] * * *, Coorg, and Ajmere and Merwara; and

(3) It shall come into force at once [3].

(Notes).

1.—"The Excise Act, 1896."

(1) **Excise Act—Its object.**

The object of the Excise Act is to prohibit persons from selling or carrying on the business of selling exciseable articles without a license. Per *Sale*, J. 31 C. 798 (804). **A**

(2) **Principle underlying such object.**

(*a*) (i) Such a prohibition by this Act of the sale, possession or manufacture of exciseable articles without the permission of the Government is based upon the principle of public policy and on moral grounds. The purpose of the Act is not merely confined to the protection of revenue. 31 C. 798 (804); 16 C. 436. **B**

(ii) Prevention of drunkenness is also one of the objects of the legislature. 16 C. 436 (437). **C**

(*b*) It is wrong to hold as is sometimes urged that the policy of the Act is merely the securing of a responsible person for the payment of revenue and that the theory of the licensing is only to get a responsible person. 31 C. 798. **D**

1.—"The Excise Act, 1896."—(Continued).

(*c*) (i) That the regulation of traffic in intoxicating liquors and drugs is dealt with not upon considerations of revenue alone but upon those of moral grounds and public policy is apparent not only from the "Preamble" which runs thus :—"Whereas it is expedient..... THE PRODUCTION, SALE, POSSESSION AND IMPORT of spirit, fermented liquors and intoxicating drugs, and THE COLLECTION OF REVENUE derived therefrom" but also from the body of the Act in which are found several provisions directed against drunkenness, of which S. 40 is one. 16 C. 436 (440). **E**

(ii) Again imposition of penalty on each specific act against which the several provisions of this Act are directed, also shows that such is the object of the Legislature. (*Ibid*). **F**

Note.—For *Statements of Objects and Reasons*, see Gazette of India, 1896, Part V, p. 9 and see p. 153 of the same Part for Report of the Select Committee. *Vide* Gazette of India, 1896, Part VI, pp. 16, 94 and 156 for Proceedings in Council.

(3) **Excise, meaning of.**

(*a*) Excise was a name formerly confined to the imposition upon beer, ale, cider and other commodities being charged sometimes upon the consumption of the commodity but more frequently upon the retail sale of it. (2, Stephen's Commentaries); Morley and Whitley's Law Dictionary (2nd Ed., p. 120). **G**

(*b*) In England, under the recent Acts of Parliament however, many other imports have been classed under excise. Such is the case with regard to the license which must be taken out by every one who keeps a dog, uses a gun, or deals in game. (*Ibid*). **H**

(4) **Extension of this Act to.**

(*a*) UPPER BURMA (EXCEPT SHAN STATES).

This Act has been extended to and declared to be in force in Upper Burmah, except the Shan States by the Burmah Laws Act, 1898. *Vide* Burmah Laws Act XIII of 1898. **I**

(*b*) LASHIO.

It has been declared to be in force in the Civil Station of Lashio in the State of North Senbi under S. 10 of Act XIII of 1898 (Burmah Laws). See Burmah Gazette, 1898, Part I, p. 584 and also Notification No. 27, dated 19th December, 1898. **J**

N.B.—Notification No. 27, dated 19th December, 1898—In exercise of the powers conferred by S. 10 of the Burmah Laws Act, 1898 (XIII of 1898) and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor of Burmah is pleased to extend... .....and the Excise Act, 1896 (Act XII of 1896) to the Civil Station of Lashio in the State of North Hsenwi. (Burmah Gazette 1898, Pt. I, p. 584). **K**

(*c*) CIVIL STATION OF TAUNGYI.

Notification No. 43, dated 16th December, 1895, as modified by Political Department Notification No. 13, dated 28th May, 1896 (Printed in Burmah Gazette, 1896, Part I, p. 252) :—In exercise of the powers conferred by section 8, sub-section (1) of the Upper Burmah Laws Act XX of 1886 (*now* S. 10 (1) of the Burmah Laws Act XIII of 1898) and section 5 of the Shan States Act XV of 1888 (*now* S. 10 (1) of Act XIII of 1898) and with the previous sanction of the Governor-General in Council, the Chief Commissioner of Burmah is pleased to

1.—"The Excise Act 1896"—(Concluded).

extend.....the Excise Act XII of 1896...as...amended by subsequent enactment as is in force in any part of Upper Burmah at the date of this Notification, to the Civil Station of Taungyi in the State of Yawng Hwe. Burmah Gazette, 1895, Part I, p. 550. **L**

N.B. -This Notification is kept in force by S. 24 of the General Clauses Act X of 1897. **M**

(5) **Penal Statutes—Construction.**

It is a rule that Penal statutes must be construed strictly. Therefore nothing is to be regarded as within the meaning of the statute which is not within the letter and which is not clearly and intelligibly described in the very words of the statute itself. 8 C. 214 (216). **N**

2.—"Chief Commissioner of....Burmah."

(1) **Now Lieutenant-Governor.**

The Chief Commissioner of Burmah is now styled as Lieutenant-Governor of Burmah. (*Vide* Gazette of India, dated 9th April, 1897, Part I, p. 261). **O**

(2) **"Inclusive of Upper Burmah" omitted.**

The words "Inclusive of Upper Burmah" which originally found a place between the words "Burmah" and "Coorg" have now been omitted being repealed by the Burmah Laws Act. See Burmah Laws Act XIII of 1898, V Schedule. **P**

3.—"It shall come into force at once."

The date of commencement of this Act.

The Act shall come into force at once, *i.e.*, on the date of the passing of the Act, *19th March, 1896*. **Q**

Repeal.

2. (1) The enactments mentioned in the schedule are repealed[1] to the extent specified in the fourth column thereof.

(2) But all rules made, powers conferred, and licenses and farms granted under any of the enactments so repealed and in force at the commencement of this Act, shall be deemed to have been respectively made, conferred, and granted under this Act.

(Note).

1.—"Are repealed."

Excise Acts in force before the passing of this Act.

(*a*) Act X of 1871.

(*b*) Act XXII of 1881.

For further particulars of Acts amending these Acts but now repealed, *see* the schedule annexed to the end of this Act. **R**

Definitions.

3. (1) In this Act—

(*a*) "Chief Revenue-authority" means,—

in the territories administered by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh,—the Board of Revenue [1];

in the territories respectively administered by the Lieutenant-Governor of the Punjab and the Chief Commissioner of Burma, —the Financial Commissioner; and

in the territories respectively administered by the Chief Commissioners of the Central Provinces, Coorg, and Ajmere and Merwara,—the Chief Commissioner:

(*b*) "Collector"[2] includes any Revenue-officer in independent charge of a district and any officer appointed by the Local Government to discharge, throughout any specified local area, the functions of a Collector under this Act;

(*c*) "Commissioner of Revenue"[3] means any officer appointed by the Local Government to discharge, throughout any specified local area, the functions of a Commissioner of Revenue under this Act:

(*d*) "Magistrate" means any Magistrate exercising powers not less than those of a Magistrate of the second class, or any Magistrate of the third class specially authorized in this behalf by the Magistrate of the district [4]:

(*e*) "import" includes removal into one Province of British India from another:

(*f*) "place" includes also house, boat, and raft:

(*g*) "tari" means the sap of any kind of palm tree:

(*h*) "fermented liquor" [5] means malt liquor, wine, pachwai, and fermented tari, and, in any provision of this Act, shall, if the Local Government, subject to the control of the Governor-General in Council, so directs, include any other fermented liquor [6], and also tari, though it may not have perceptibly begun to ferment:

(*i*) "spirit" [7] means any liquor containing alcohol obtained by distillation:

(*j*) the expression "intoxicating drugs" [8] means ganja, bhang, charas, and every preparation and admixture of the same:

(*k*) "hemp" means any variety of the hemp plant from which intoxicating drugs can be produced:

(*l*) "tola" means a weight of one hundred and eighty grains Troy:

(*m*) "ser" [9] means a weight of eighty tolas:

(*n*) the articles next hereinafter mentioned shall be deemed to be sold retail within the meaning of this Act when sold in quantities not exceeding those next hereinafter specified in respect of them, that is to say,—

foreign spirit or foreign fermented liquor [10], two imperial gallons or twelve reputed quart bottles;

country spirit, one ser, and in Burma one reputed quart bottle;

country fermented liquor, four sers, and in Burma four reputed quart bottles;

bhang, or any preparation or admixture thereof, one ser;

ganga or charas, or any preparation or admixture thereof, five tolas.

If sold in larger quantities, they shall be deemed to be sold wholesale.

(2) In any case in which doubt arises, the Local Government may decide [11] what, for the purposes of this Act, shall be deemed to be "country spirit," "country fermented liquor," "foreign spirit," and "foreign fermented liquor;" and such decision shall be binding on the Courts.

(Notes).

1.—"The Board of Revenue."

Definition in Court Fees Act.

Chief Revenue authority as meaning the Board of Revenue in the territories administered by the Lieutenant-Governor of North-West Provinces and the Commissioner of Oudh is similarly defined in the Court Fees Act, VII of 1870 as amended by Act X of 1901. (*Vide* S. 2 of Act VII of 1870). *N. B.*—See also the Indian Stamp Act II of 1899. **S**

2.—"Collector."

(1) **Collector—Definition in other Acts.**

In this connection, see the same word "Collector" defined in S. 2 of Indian Stamp Act II of 1899 and S. 3, cl. (10) of the General Clauses Act X of 1897. **T**

(2) **Sub-Collectors and Head Assistant Collectors vested with powers of a Collector.**

(*a*) MADRAS PRESIDENCY.

All Revenue Officers holding the rank of Sub-Collector or Head Assistant Collector in charge of divisions in all the districts of the Madras Presidency have been invested with the powers of a Collector to be exercised within the limits of their respective local jurisdiction. (*Vide* Ss. 35, 36, 37, 38, 39 of Act I of 1879) (also Fort St. George Gazette, 15th July, 1879, p. 488, and that of 22nd September, 1879, p. 78). **U**

(*b*) MALABAR.

The Special Assistant Collector in Malabar holds the rank of a Sub-Collector, and is invested with the powers of a Collector to be exercised within the limits of his local jurisdiction. [G. O. No. 455, 13th April, 1880 and Fort St. George Gazette, 30th November, 1881, Part II, p. 609.] **V**

3.—"Commissioner of Revenue."

Definition in General Clauses Act.

Commissioner shall mean the chief officer in charge of the Revenue administration of a Division. (*Vide* S. 3, cl. (13) of Act X of 1897). **W**

4.—"By the Magistrate of the district."

(1) **District Magistrate.**

The Magistrate referred to here is the District Magistrate. (*Vide* S. 3 of Act X of 1882.) **X**

(2) **Powers of District Magistrate exercised by Superintendent or Assistant Superintendent.**

(*a*) LASHIO.

Notification No. 28, dated 19th December, 1898:—In exercise of the powers conferred by S. 12, sub.-sec. (1), cl. (*c*) of the Burmah Laws Act XIII of 1898 and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor of Burmah is pleased to direct that in the Civil station of Lashio in the State of North Hesni—

(i) the functions and powers performed and exercised by the Chief Revenue Authority and by the Financial Commissioner respectively, under the Excise XII of 1896 and the rules made thereunder, shall be performed and exercised by the Lieutenant-Governor; **Y**

(ii) the jurisdiction, powers and duties exercised and performed by the District Magistrate under...the Excise Act XII of 1896, shall be exercised and performed by the Superintendent of the Northern Shan States and every Assistant Superintendent of the Shan States shall exercise and perform the jurisdiction, powers and duties of a sub-divisional Magistrate, being a Magistrate of the first class, under the said Acts. Burmah Gazette, 1898, Part I, p. 585. **Z**

(*b*) IN TAUNGYI.

So also in the Civil station of Taungyi in the State of Yawnghwe (*Vide* Notification No. 44, dated 16th December, 1895, as modified by Notification No. 14, dated 28th May, 1896). See Burmah Gazette, 1895, Part I, p. 551 and Burmah Gazette, 1896, Part I, p. 252. **A**

5.—"Fermented liquor."

"Kazawye" no "fermented liquor."

Kazawye, a genuine term for fermented liquor, which is neither included in S. 3 (*h*) nor declared to be a "fermented liquor" by the Local Government cannot be held to be a "fermented liquor" within the meaning of S. 3 (*h*). L.B.R. (1900-02), Vol. I, p. 172. **B**

N.B.—*Kazawye* has now been declared to be a "fermented liquor" by Financial Department Notification No. 27, dated 20th May, 1903. **C**

6.—"If the Local Government....directs, include any other fermented liquor."

(1) **What the term includes.**

Vide Notification in Burmah Gazette, 1895, Part I, page 355 as to what the term "fermented liquor" means and includes. **D**

(2) ***Seye* declared to be a fermented liquor.**

"*Seye*" has been declared by the Government of Burmah to be a fermented liqour. See Financial Department Notification No. 36, dated the 14th August, 1895 (also Finance and Commerce Department, Notification No. 14, dated the 12th March, 1891). **E**

7.—"Spirit."

Medicine containing alcohol.

The term spirituous liquor, though not defined in the Act, is not intended to include a medicinal preparation merely because it is a liquid substance containing alcohol in its composition. 1 C.W.N. 1. **F**

8.—"Intoxicating drugs."

(1) **What drugs are intoxicating drugs.**

As Ganja-Bhang and Charus which come under the definition of "intoxicating drug," are the narcotic products of hemp, if any preparation is proved to be a narcotic product of hemp, it may come under the definition of "Intoxicating Drug." U.B.R. (1909) Excise, p. 1. **G**

(2) **"Chandu"—No intoxicating drug.**

"Chandu," a preparation from opium is not an "intoxicating drug within the meaning of subsection (*j*). 1884 A.W.N. 213. **H**

(3) **Whether "Port" is an intoxicating drug.**

"*Port*" in which opium is allowed to ripen and which is expressly grown for the purpose of mixing with water to drink has been held to be an intoxicating drug within the meaning of sections 49 and 50 of Act XXI of 1856, though the word does not expressly find a place in section 90 of that Act. 9 P.R. 1870 (Criminal). **I**

Note Semble: Whether it could be held as an intoxicating drug within the meaning of S. 3 (*j*) of Act XII of 1896. **J**

(4) **Yeast balls are not intoxicating drugs.**

Yeast balls which are balls of flour soaked in the sap or juices of different plants, such as toddy tree roots, gain-grass roots, and cocoanut roots, with a little sugar added to it, are not intoxicating drugs within the meaning of section 3 (*j*) so long as they are in a dried state and mixed with rice-water or jaggery when fermentation takes place. L.B.R. (1872-1892) 571 (p. 572). **K**

(5) **Hemp. no intoxicating drug.**

"Hemp" is not an intoxicating drug within the meaning of this section so as to make the possession or sale of it, by any person punishable under the Excise Act. U.B.R. (1909) Excise, p. 1. **L & M**

N.B.—The "preparation of hemp" is specially provided for in Chapter III (Ss. 12 and 13 in particular) and in S. 38.

9.—"Ser."

(1) **"Ser"—Explanation.**

Ser is the primary standard of weight. It is a weight of metal in the possession of the Government of India, equal when weighed in a vacuum to the weight known in France as the Kilo-grammedes Archives. (*Vide* the Indian Weights and Measures of Capacity Act, 1871, S. 2). **N**

(2) **"Ser" applied as a measure of capacity.**

"Ser" when used as a measure of capacity (and not as a unit of weight) means, a measure containing one such ser or water at its maximum density weighed in a vacuum. (Vide Act No. XXXI of 1871), S. 3. **O**

(3) **Customary weight of "Ser"—95 Tolas.**

The weight of one "ser" as given in the Indian Weights and Measures Act, viz., a weight of metal in the possession of the Government of India which weight when weighed in a vacuum is equal to the weight known

9.—"Ser"—(Concluded).

in France as the '*Kilogrammedes Archives*'—is not very intelligible. The contention of the Government that a *ser* was equivalent to 80 tolas would not supersede, the customary weight of a *ser* weight, viz., 95 tolas. 3 All. 404. **O-1**

N.B.—It is to be noted that just after the decision in 3 All. 404 was given the Excise Act, 1881, was passed wherein the legislature has, in altering many things relating to Excise Law, defined very clearly the weight of "Ser" as meaning 80 tolas. See Note (1) to 3 All. 404). **O-2**

N.B.—*Semble.* Whether this legislative enactment (*ser* meaning 80 tolas) has practically overruled the decision in 3 All. 404 above quoted. **P**

10.—"Foreign spirit or foreign fermented liquor."

(1) **"Foreign spirit" includes "Distillery spirit."**

For the purpose of the Excise Act, distillery spirits or liquors are to be treated as foreign spirits or foreign liquors, because of the notification issued by the Local Government of Upper Burmah to that effect. U.B.R. (1892—1896) Excise p. 87 (90). **Q**

(2) **"Shamshu" whether foreign or country spirit.**

Shamshu, though it is *prima facie* country spirit, becomes converted into a foreign spirit, if it comes from a distillery. U.B.R. (1892—1896) Excise, p. 87 (88).

N.B.—For further information, see S. 30, *infra*. **R**

11.—"The Local Government may decide."

Guiding rule to find whether a spirit is country or foreign.

Country spirits, it is said, can only be made to a strength of 40 or 50 degrees below proof; whereas foreign spirit can be made to a degree of strength very near proof. Hence the degree of strength of the spirit is a proper test to find out whether it is foreign or country spirit. U.B.R. (1892—1896) Excise, p. 87. **R-1**

N B.—Because it is not possible for spirits made by the Native process to be brought to so high a degree of strength (that of proof or almost proof) as that of a foreign or distillery spirit. (*Ibid.* at p. 90). **S**

STRENGTH OF SPIRITS THAT ARE FOR SALE.

The probable strength of spirits for sale would be about 65 or 70 under proof.

In the case of distillery liquor, the practice is to dilate it, for purposes of sale, down to less than half its strength, so that the distillery liquor *ready for sale* and country liquor would in most instances be indistinguishable. (*Ibid.*) **S 1**

N.B.—Distillery liquor (other than imported foreign liquor) and country liquor are both manufactured generally from jaggery. (*Ibid.*)

See Notification as to what liquors are "country spirits" and what are "foreign spirits" published in Burmah Gaz., 1895, Pt. I, p. 355 and Burmah Gaz., 1897, Pt. I, p. 19. **T & U**

Saving of Acts XVI. of 1863 and XIII. of 1889.

4. Nothing herein contained shall affect Act XVI. of 1863 (*to make special provision for the levy of the Excise-duty payable on spirits used exclusively in Arts and Manufactures or in Chemistry*) or the Cantonments Act, 1889.

CHAPTER II.

PRODUCTION OF SPIRIT AND FERMENTED LIQUOR.

Manufacture of spirit and liquor without license prohibited.

5. No person shall construct, work, or possess a distillery, still, or brewery, or manufacture [1] fermented liquor, in any district except under a license granted by the Collector or by a person authorised by the Collector [2] to grant such license, and in accordance with the conditions (if any) contained therein.

(Notes).

1.—"Or manufacture."

Natural fermentation is no manufacture.

The term 'manufacture'' in this section of the Act does not include *natural* fermentation of tari unaided by any artificial process. L.B.R. (1900-1902), Vol. I, p. 214 (Cr). **Y**

N.B.—See also the Financial Commissioner's Circular No. 10 of 1892 at page 230 of the Burmah Excise Manual.

2.—"Except under a license....Collector."

(1) **Licensee subletting his license illegal.**

(*a* Under S. 5 of this Act, it is only persons to whom the license has been granted who can take benefit of it. So a person cannot enjoy the benefits of such license as a sublessee of the original licensee. A contract of sub-leasing a license is contrary to the provisions of the Excise Act and it is therefore illegal. 1888 A.W.N. 215 = 10 All. 577. **Y1**

N.B.—For the general and special principles upon which the view against subletting a license is based, see notes on section 52, *infra*. **W**

(*b*) In connection with Excise Acts, the person to whom the license is given is the only person who can avail himself of such license and it would be defeating the policy of such enactments if such licensee is allowed to sublease the license by any agreement. *Ditchie* v. *Smith* (18 L. J. C., p. 9); *Gundell* v. *Dawson* (17 L.J.C. p. 311); *Smith* v. *Mawhood* (15 L.J C. Exch. 149) and *Taylor* v. *The Growlaad Gas and Coke Co.* (23 L.J. Exch. 254) **X**

(*c*) In dealing with the Bengal Excise Act, Sir Richard Couch, C.J. says :—

" A contract by which a licensee lets the shop and the use of the license for a fixed term, receiving rent, is contrary to the policy of the law and comes within the rule that a contract which is illegal or is contrary to public policy, cannot be enforced." 21 W.R. 289. **Y**

(2) **Money due from such sublease not recoverable.**

As the subletting of a license to manufacture and sell country liquor is made punishable as an offence and is to be deemed as an act contrary to law within the meaning of S. 23, Contract Act, the claim to recover money due on such sublease is not enforceable in a Court of justice. 10 All. 577. **Z**

(3) **Transfer of license illegal.**

No licensee under the Excise laws can transfer his license to any person, as such an act would defeat the policy of the law. 1888 A.W.N. 215 (216). **A**

2.—"Except under a license....Collector"—(*Concluded*).

(4) **Reasons for the prohibition against subleasing or transferring a license.**

The view that a contract of subleasing or transfer of a license ought not to be allowed is based not only upon the general principle that anything which defeats statutory provisions or is against the public morals should not be allowed, but upon the especial matters of the Excise law that the capacity of the licensee is a matter to be taken into account, and that the consideration of the public morals also forms part of the granting of such license with reference to the character of such licensee. 1888 A.W.N. 215 (216). **B**

(5) **Prohibition under Excise Act different from that under Regulation VI of 1819.**

It is wrong to hold that the restrictions upon subleasing a license are intended only for the protection of the public revenue and do not vitiate the contract entered into by a licensee with a third party. It might be so under Regulation VI of 1819. This Regulation is in many respects different both in point of nature and policy from the Excise Act. 1888 A.W.N. 215 (216). **C**

Power to establish distilleries for country spirit.

6. The Collector may, with the previous sanction of the Chief Revenue-authority, from time to time—

(*a*) establish at any place within his district a distillery in which country spirit may be made, and discontinue any distillery so established; and

(*b*) fix limits within his district within which no such spirit, unless made in the said distillery, shall be introduced without a pass from him.

Duty on spirit.

7. No spirit shall be removed from any distillery licensed under section 5 or established under section 6 until—

(*a*) such duty as the Local Government may from time to time fix in respect of such spirit has been paid, [1] or

(*b*) a bond for such duty has been executed, or

(*c*) duty in respect of the materials used in making such spirit has been levied at such rates and in such manner as the Local Government, with the previous sanction of the Governor-General in Council, may from time to time direct.

Explanation.—Duty may be fixed or made payable under this section at different rates according to the places to which any spirit is to be removed for consumption.

(Notes).

1.—"Such duty....has been paid."

Duty on spirits.

As to the fixing of duty on spirits intended to be used exclusively in arts, manufacture or in chemistry when removed from a distillery, see Burmah Gaz., 1886, Pt. I., p. 269 and as to the duty payable on spirits manufactured in distilleries licensed under S. 5, *vide* Burmah Gaz., Pt. I, p. 130. D

Duty on fermented liquor.

8. No fermented liquor shall be removed from a brewery licensed under section 5 until—

(*a*) duty has been paid thereon at the rate for the time being leviable under the Indian Tariff Act, 1894, on like liquor imported by sea into any part of British India except Aden and Perim, or at such lower rate as the Local Government, having regard to the circumstances of the brewery or of the local area in which the brewery is situate, may from time to time prescribe, or

(*b*) a bond for such duty has been executed.

Power for Chief Revenue-authority to make rules as to distilleries and breweries licensed under section 5.

9. The Chief Revenue-authority may, from time to time, make rules[1] as to—

(*a*) the granting of licenses for distilleries, stills, and breweries under section 5;

(*b*) the notices to be given by the proprietor of a licensed distillery or licensed brewery when he commences and discontinues work;

(*c*) the size and description of the stills in such distillery;

(*d*) the storing and passing out of the spirit made in such distillery, or of the fermented liquor made in such brewery, and the contents of the passes;

(*e*) the inspection and examination of such distillery or brewery, and the ware-houses connected therewith, and of the spirit or fermented liquor made and stored therein;

(*f*) the furnishing of statements of the spirit and the stills, coppers, casks, and other utensils in such distillery, or of the fermented liquor and the mashtuns, underbacks, wort-receivers, coppers, heating tanks, coolers, and collecting, fermenting, and other vessels in such brewery.

(Notes).

1.—"May make rules."

Rules made under this section.

For general rules made in exercise of the powers given under this section and S. 65, *infra*, *vide* Burmah Gaz., 1897, Pt. IV, p. 175. **E**

Power for Chief Revenue-authority to make rules for distilleries established under section 6.

10. The Chief Revenue-authority may, from time to time, make rules as to—

(*a*) the management of distilleries established under section 6, and, in particular, the conditions on which any materials to be used in making spirit may be brought into such distillery;

(*b*) the conditions on which spirit may be made in such distilleries; and

(*c*) the storing and passing out of the spirit so made, and the contents of the passes.

Sanction to rules under sections 9 and 10.

11. Except in the territories respectively administered by the Chief Commissioners of the Central Provinces, Coorg, and Ajmere and Merwara, the sanction of the Local Government is required to validate rules under sections 9 any 10.

CHAPTER III.

CULTIVATION AND CONTROL OF INTOXICATING DRUGS.

Prohibition, resriction, and regulation of cultivation of hemp and production of intoxicating drugs.

12. (1) In Burma, the cultivation of hemp and the preparation of intoxicating drugs are prohibited [1] except under, and in accordance with, a license ranted by such officer as the Local Government may from time to time appoint in this behalf.

(2) In the other territories to which this Act extends, the Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, by notification in the official Gazette, in respect of the whole or any part of the territories administered by it,—

(*a*) prohibit, absolutely or except under, and subject to the conditions of, a license granted by such officer as the Local Government may from time to time appoint in this behalf, the cultivation of the hemp plant and the production or preparation of intoxicating drugs from [illegible] cultivated, and place the cultivation

of the hemp plant and the production or preparation and storage of such intoxicating drugs as aforesaid under such supervision as may be deemed necessary to secure payment of the duty (if any) imposed under this Act;

(*b*) restrict and regulate, in such manner as may by rule be prescribed, the collection by any person of the spontaneous growth of the hemp plant and the preparation of intoxicating drugs from the spontaneous growth so collected;

(*c*) prohibit, absolutely or otherwise than by certain specified routes and under specified conditions, the import and transport of intoxicating drugs;

and may, in like manner, cancel or vary any such notification.

(Note).

I.—"And the preparation....prohibited."

Preparation of "Chandu," not prohibited.

The illegal manufacture or preparation of "*chandu*" which is prepared from opium does not come under this section. 1884 A.W.N. 213. **F**

Duty on cultivation of hemp and intoxicating drugs.

13. The Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, by notification in the official Gazette, in respect of the whole or any part of the territories administered by it,—

(*a*) impose such duty, not exceeding two hundred rupees per acre, as it may think fit, on the cultivation of hemp; or

(*b*) impose such duty, not exceeding twenty rupees per ser, as it may think fit, on intoxicating drugs produced or prepared in, or imported into, or exported from, or transported from place to place within, any of the territories to which this Act extends, or any part thereof;

and may, in like manner, alter or abolish any duty imposed under this section.

Establishment and licensing of bonded and other warehouses and levy of duty on intoxicating drugs on issue therefrom.

14. The Local Government, with the previous sanction of the Governor-General in Council, may, from time to time,—

(*a*) establish or license bonded or other ware-houses for the storage of intoxicating drugs, and

(*b*) direct that, subject to such conditions (if any) as it may, from time to time, impose, the levy of the duty (if any) payable under section 13 on intoxicating drugs in transit to or from, or stored in, such ware-houses, shall be postponed until such time as may, by rule, be fixed in this behalf.

Payment of warehouse dues.

15. (1) If intoxicating drugs be lodged in a warehouse established under the last foregoing section, the owner shall pay monthly, on receiving a bill or written demand for the same from the Collector or other officer deputed by the Collector in this behalf, warehouse-dues at such rates as the Chief Revenue-authority may fix.

(2) If any bill for warehouse-dues presented under this section is not discharged within ten days from the date of presentation, the Collector may, in discharge of such demand (any transfer or assignment of the drugs notwithstanding), cause to be sold, in such manner as he may think fit, such sufficient portion of the drugs as he may select.

(3) Out of the proceeds of such sale the Collector shall satisfy, first, the duty payable in respect of the drugs sold, and, next, the demand in respect of which the drugs were sold, and shall then pay the surplus (if any) to the owner of the drugs on his application :

Provided that, if the drugs fail to produce a sum sufficient to satisfy the said duty and demand, the same shall not be sold, but shall be destroyed by, or by order of, the Collector.

Provided also that the application for such surplus (if any) as aforesaid be made within one year from the date of the sale of the drugs, or that sufficient cause be shown for not making it within such period.

Period during which intoxicating drugs may remain warehoused.

16. Any intoxicating drugs warehoused under this Act may be left in the warehouse in which they are deposited, or in any warehouse to which they may in manner hereinafter provided be removed, till the expiry of two years from the date on which they were so deposited. The owner of any drugs remaining in a warehouse on the expiry of such period shall forthwith clear the same :

Provided that, when the license for a warehouse licensed under this Act is cancelled, and the Collector gives notice of such cancellation to the owner of any drugs deposited in such warehouse, such owner shall, within seven days from the date on which such notice is given, remove such drugs to another warehouse, or clear them.

Power to remove intoxicating drugs from one warehouse to another.

17. Any owner of intoxicating drugs warehoused under this Act may, at any time within two years from the date on which the drugs were so warehoused, with the permission of the Collector, and on such conditions and after giving such security (if any) as the Collector may direct, remove the drugs from one warehouse to another, whether established or licensed by the same or another Local Government, and whether under this Act or under any other enactment for the time being in force.

Possession of intoxicating drugs.

18. (1) In Burma no person shall have in his possession any intoxicating drugs except under, and in accordance with the terms of, a general exemption granted by the Local Government, or a license granted by such officer as the Local Government may, from time to time, appoint in this behalf.

(2) In the other territories to which this Act extends, no person shall have in his possession any larger quantity of any intoxicating drugs than that specified in section 3, sub-section 1, clause *n*, in respect of such drugs, unless he is permitted to collect, cultivate, manufacture, or sell the same, or holds a pass therefor from the Collector or some other officer empowered by the Local Government to grant such passes.

Power for Local Government to make rules.

19. The Local Government, with the previous sanction of the Governor-General in Council, may, from time to time, by notification in the official Gazette, make rules consistent with this Act—

(*a*) to regulate the time, place, and manner of payment of the duties (if any) imposed under section 13,

(*b*) to carry into effect the provisions of section 12, section 14, and section 18, or any of them, and

(*c*) generally, to carry into effect the provisions of this chapter.

Power for Collector or other authorized officer to grant licenses and passes for the possession or transport of intoxicating drugs, and for Chief Revenue-authority to make rules.

20. The Collector or any other officer empowered by the Local Government in this behalf may, from time to time, grant licenses or passes to persons desirous of possessing or transporting intoxicating drugs, and the Chief Revenue authority, with the previous sanction of the Local Government, may make rules to regulate the grant of such licenses or passes.

CHAPTER IV.

SALE OF SPIRIT, FERMENTED LIQUOR, AND INTOXICATING DRUGS.

Spirit, fermented liquor, and intoxicating drugs not to be sold without license.

21. No spirit, fermented liquor, or intoxicating drug [1], shall be sold, except under, and in accordance with the terms of, a license [2] granted under the provisions hereinafter contained :

Provided as follows :—

(*a*) nothing in this section applies to the sale of any foreign spirit or foreign fermented liquor legally procured by any person for his private use, and sold by him or by auction on his behalf or on behalf of his representatives in interest upon his quitting a station or after his decease ;

(*b*) any officer empowered in this behalf by the Chief Revenue-authority may grant to travelling merchants, subject to such rules and restrictions as such authority may from time to time prescribe, a general license authorizing them to sell foreign spirit and foreign fermented liquor wholesale in any district which they may visit in the course of their travels, without taking out a fresh license for that district ;

(*c*) any person making or producing country spirit or country fermented liquor, in accordance with the provisions of this Act, may, subject to any rules from time to time made by the Local Government in this behalf, sell such spirit or liquor to any person licensed under this Act as a retail vendor of such spirit or liquor ;

(*d*) any person authorized to cultivate the hemp plant may sell any intoxicating drug prepared from his plants to any person to whom he is permitted by the conditions

of his license to sell the same, or to any person authorized to purchase the same by the order in writing of the Collector.

(Notes).

General.

Scope of S. 21.

No one can sell unless he has a license, and if he has a license, he can sell only to the precise extent defined in his license. (*e.g.*) If he sells to a person or at a place or a kind of liquor to which the license does not extend, he is virtually selling without a license, because he has no license to sell as he is doing. U.B.R. (1897-1901) Vol. I (Cr.) p. 189 (191). **G**

1.—"No spirit, fermented liquor or intoxicating drug."

Selling *tari* not fermented.

Selling of juice extracted from palm trees to passers-by will not come under this section if the "*tari*" is not shown to be "*fermented.*" 1883 A.W.N. 238. **H**

2.—"Except under and in accordance with the terms of a license."

(1) **Sale by a servant of a license holder not punishable.**

Sale of liquor by a servant temporarily in charge of the shop of an out-still license-holder is not an offence under this Act. Neither the license-holder nor the servant can be held guilty of any offence under this Act. 1894 A.W.N. 201. **I**

(2) **Selling under an agreement from a licensee.**

(*a*) Any agreement the object of which is to enable a person to carry on the business of a vendor of liquor in contravention of the Excise Law is void. 31 C. 798. **J**

(*b*) In general, an agreement the effect of which is in any way to contravene the policy of the Excise Act is illegal. (*Ibid.*) **K**

(*c*) As a license which is a personal privilege under this Act cannot be transferred by one private individual to another, a licensee cannot sue to recover a certain sum agreed to be paid by the transferee of the license as indemnity for an alleged breach of an undertaking by the transferee, because such a transfer is illegal *ab initio* and the indemnity is inseparable from the rest of the contract and therefore illegal and void. 31 C. 798. **L**

(3) **Sale should be in accordance with the terms of the license.**

A licensee can take advantage of a license subject to the terms of the license itself and not in contravention thereof. 1888 A.W.N. 215=10 All 577. **M**

(4) **Selling liquor to soldiers not knowingly but in ignorance.**

Although selling liquors to soldiers is not in accordance with the terms of the license, yet if any person, not a soldier calls for a glass of beer for himself from a licensed vendor and gives it to a soldier, the licensee, when he sold the liquor, being ignorant of the purchaser's intention,

2.—"Except under and in accordance with the terms of a license"—(Cld).

cannot be held to have committed any offence. But if the licensee knew that the beer which is being bought is to be supplied to a soldier the case would be otherwise. U.B.R. (1897-1901) Vol. I (Cr.) p. 178 (179). **N**

(5) Sale of liquor to a soldier in ignorance—Soldier whether punishable for abetting.

As seen above, when the seller does not know that the actual vendee of liquor is a soldier, he cannot be convicted of any offence; consequently the soldier who has bought liquor from a licensed vendor cannot be convicted of having "abetted the commission of an offence" when no offence at all was committed by the vendor. For, to convict a person "of an ab tment of an offence," an offence must first be established: if no offence was committed, there could be no abetment of offence. U.B.R. (1897-1901), Vol. I. (Cr.) p. 184.

N. B.—For further information on this subject see notes on S. 49, *infra* which section ought to be read along with this section. **O**

(6) Carrying on business by a servant.

A licensee is not bound personally to carry on the business of selling liquor. He might employ a servant. L.B.R. (1872-1892), p. 373 (375). **P**

Licenses how granted and cancelled.

22. (1) Subject to the rules made by the Chief Revenue authority [1] under the powers conferred by this Act, the Collector [2] may grant licenses [3] for the sale of foreign spirit and foreign fermented liquor, wholesale or retail, and for the retail sale of country spirit or country fermented liquor, and (except in Burma) of intoxicating drugs, within his district or any part thereof or at any place therein.

(2) Licenses for the sale of country spirit and country fermented liquor and intoxicating drugs, wholesale, and licenses for the sale, in Burma, of intoxicating drugs, retail, shall be granted only by such officer as the Local Government from time to time appoints in this behalf [4].

(3) Any license granted under this section may be cancelled by the Collector for any cause specified therein.

(Notes).

1. "Rules made by the Chief Revenue authority."

Rules made under this section.

For rules made under this section and S. 65 below, regarding the grant of licenses to sell spirit etc. in Taungyi and the civil station of Lashio, *vide* Burmah Gaz. 1896, Part I, p. 264 and Burmah Gazette 1899, Part I. p. 276. **Q**

2.—"*The Collector.*"

(1) **Power given to Collector by this section.**

S. 22 of the Excise Act provides that the Collector may grant licenses for the sale of foreign spirit. U.B.R. (1892-1896), p. 95 (96). **R**

(2) **Such license to be in accordance with the rules of Chief Revenue authority.**

But it is obvious that if the Collector puts any condition in such license, which the rules of the Chief Revenue authority did not permit, he is acting *ultra vires* and the condition could not be binding. U.B.R. (1892-1896), Vol. I, p. 95 (96). **S**

3.—"*May grant licenses.*"

(1) **License, is a personal privilege.**

The object and purpose of the Excise Law is to make the license under it a personal privilege which the excise authorities have the sole right of granting or withholding. 31 C. 798. **T**

(2) **License, not heritable.**

As a license is a personal grant largely made for personal reasons, it will not after the death of the licensee attach itself in any way to his property or devolve upon his heirs. 22 All. 441. **U**

(3) **Transfer of license.**

(*a*) LICENSE COULD NOT BE TRANSFERRED.

See 31 C. 798 under S. 21 *supra*. **U1**

(*b*) TRANSFER WHETHER POSSIBLE.

But a person may transfer his license to another, if he had taken out a license from the Collector to do so. (*Ibid.*) **V**

(*c*) AGREEMENT TRANSFERRING ONE'S RIGHTS UNDER THE LICENSE THOUGH NO ACTUAL TRANSFER, ILLEGAL.

As under S. 23 of the Indian Contract Act IX of 1872 any agreement which is of such a nature that, if permitted, it would defeat the provision of any law or is opposed to public policy, is void, an agreement under which a person without actually transferring the license permits another to use his name and license and carry on business in every way uncontrolled by him as if he were himself the licensee and which agreement has thus the effect of transferring the rights and privileges conferred by the license and so frustrating the object and defeating the provisions of the Excise Law is Illegal and void. 31 C. 798. **W**

(4) **Agreement for the sale of liquor void.**

Also, an agreement for the sale of fermented liquors entered into by a person who has not obtained a license under the Act is void and cannot be recovered. 16 C. 436, *Ritchie* v. *Smith* 6 C.B. 462: 21 W R. 289, 12 B. 422. 10 A. 577. **X**

(5) **Granting of license—Usual period for which it is granted.**

(*a*) IN NORTH WEST PROVINCES.

It appears that licenses for the sale of spirituous and fermented liquors by retail may be granted in the North West Provinces for any term not less than three calendar months and not exceeding one calendar year 1 A. 638 (639). **Y**

(*b*) IN ALLAHABAD.

In Allahabad such licenses are usually granted for a period of three months. (*Ibid.*) **Z**

3.—"May grant licenses"—(Concluded).

(6) **Fees to be paid in advance.**

The fees leviable on such licenses (usually 8 Rs. per mensem in Allahabad) should be paid in advance such being one of the conditions precedent to the granting of licenses. 1 A. 638 (639). **A**

(7) **No intention to cancel—License not recalled—License subsists.**

If no notice is given by the license holder on the expiry of his license of his intention not to renew the license and the Collector had not recalled the same under the provisions of S. 22 or S. 23, the license will continue to remain in force. 1 A. 638 and 1 A. 630. **B**

4.—"As the Local Government....behalf."

Collector, so appointed.

The Collector has been appointed to perform this duty in Burmah. See Notification in Burmah Gaz. 1892, Pt. I, p. 71. **C**

Further power to cancel licenses.

23. (1) Whenever the Collector considers that the license of a vendor of country spirit, country fermented liquor, or intoxicating drugs, should be cancelled [1] for any cause other than those specified in such license, he shall remit a sum equal to the amount of the license-fee for fifteen days, and shall either give fifteen days' previous notice of his intention to cancel the license, or shall, in addition to remitting such sum as aforesaid, make such compensation for default of notice as the Commissioner of Revenue or the Chief Revenue-authority directs.

(2) On the expiration of such notice or the payment of such additional compensation, the Collector may cancel the said license.

(Notes).

1.—"Whenever the Collector considers....cancelled."

Collector when empowered to cancel.

A Collector can cancel or recall a license whenever he considers that :—

(*a*) Any of the conditions of the license have not been complied with. (*Vide* S. 22 above). **D**

Or (*b*) (Under the old Act, S. 34).

Or (i) the tax or duty specified therein had not been paid.

Or (ii) the holder was guilty of a breach of the peace. **E**

Or (*c*) he was guilty of any other offence. 1 All. 630 (634). **E1**

N.B.—But if the Collector desires to cancel it for any other cause he should comply with the provisions of this section.

Surrender of retail license.

24. (1) Any retail vendor licensed under this Act may surrender his license on the expiration of one month's previous notice given by him to the Collector of [illegible] to surrender the same and on payment of such sum,

not exceeding the amount of the license-fee for six months, as the Collector may fix in this behalf.

(2) If the Collector is satisfied that there is sufficient reason for surrendering a license, he may remit the sum so fixed.

Power for Collector to farm fees, and for farmer to grant licenses.

25. (1) The Collector, with the sanction of the Chief Revenue authority, may let in farm—

(*a*) the fees leviable in any district or part of a district on licenses for the retail sale of any description of country spirits or country fermented liquor or (except in Burma) of intoxicating drugs;

(*b*) the right to manufacture, in any district or part of a district in which no distillery is established under section 6, country spirit or country fermented liquor.

(2) When the fees so leviable or the right to manufacture such spirit or liquor, or both, are or is let in farm, the farmer may, subject to such reservations or restrictions as the Collector, with the sanction of the Chief Revenue-authority, may from time to time make or impose, grant licenses for the retail sale, or for the manufacture, or for both, as the case may be, of such articles within the local limits of his farm, and shall file in the Collector's office a list of all the licenses granted by him in such form and on such day or days in each year as the Chief Revenue-authority may, from time to time, prescribe in this behalf.

Farm may be cancelled.

26. The Collector, with the sanction of the Chief Revenue-authority, may cancel any farm granted under this Act.

Compensation to farmers in certain cases.

27. If any such farm be cancelled for any cause other than a breach on the part of the farmer of the conditions of the farm, or if any reservation or restriction with respect to the grant of licenses be made or imposed within the term of the farm, the farmer shall be entitled to receive for any loss which he sustains thereby such compensation as the Chief Revenue authority may determine.

Recovery of arrears by farmers.

28. Every farmer under this Act may use the same means and processes for the recovery of any arrear of fees [1] due to him from any retail vendor as may be lawfully used by the local landholders for the recovery of arrears of rent due to them from their tenants.

(Notes).

1.—"For the recovery of any arrears of fees."

(1) **Section confined to arrears of fees only.**

This section is confined to the recovery of *arrears of fees*. (1906) A.W.N. 314 A.L.J. 802. **F**

(2) **Does not extend to recovery of compensation.**

Under this section which entitles a farmer of a license for the sale of intoxicating drugs to use the same means for the recovery of any *arrears of fees* (only) a person is not entitled to sue in a Revenue Court for the recovery of compensation or damages in respect of a breach of contract. (*Ibid.*) **G**

Power for Chief Revenue-authority to regulate supply of tari to licensed vendors.

29. The Chief Revenue authority may, from time to time, make rules to regulate the mode in which tari shall be supplied to licensed vendors of the same.

CHAPTER V.

POSSESSION AND IMPORT OF SPIRIT AND FERMENTED LIQUOR.

Possession of spirit, &c.

30. (1) No person shall have in his possession any quantity of any spirit or fermented liquor larger than that specified in section 3, sub-section *I*, clause *n* [1], in respect of such spirit or liquor, unless he is permitted to manufacture or sell the same [2], or he holds a pass therefor from the Collector or from some officer empowered by the Local Government to grant such passes:

(2) Nothing in this section extends to—

(*a*) any foreign spirit or foreign fermented liquor [3] in the possession of any common carrier or warehouseman as such, or purchased by any person for his private use and not for sale [4], or

(*b*) tari intended to be used for the manufacture of gur or molasses.

(Notes).

1.—"No person shall in his possession....S. 3 (1) Cl. (n)."

(1) **S. 3, Cl. (*n*).**

S. 3, Cl. (*n*), *supra*, deals within the meaning of "*selling in retail*" of spirit, fermented liquors and intoxicating drugs.

(2) **Quantity possession of which is legal.**

(*a*) COUNTRY SPIRIT.

In the case of spirits which are treated as *prima facie* country spirits, the limit of quantity which may be possessed without incuring the displeasure of this section, is one reputed quart-bottle. U.B.R. (1892-1896), Excise p. 87 (at p. 90). **H**

I.—"No person shall in his possession....S. 3 (1) Cl. (n)"—(Continued).

(b) FOREIGN SPIRITS, AND SPIRITS DEEMED TO BE FOREIGN SPIRITS.

On the other hand, in the case of foreign spirits and spirits which are to be treated as foreign spirits (such as, distellery spirits other than imported foreign spirits), the limit of possession under S. 3 (n) is twelve reputed quart bottles or two imperial gallons; under the proviso to this section, there is *no limit* if the spirits are purchased by a person for his private use and not for sale. (*Ibid.*) **I**

(3) **Having more than one ser of liquor in possession—punishable.**

Any person having in his possession more than one ser of liquor without any license is liable to be punished under the provisions of S. 31 of Act XXII of 1864. A camp follower who had in his possession without any license more then one ser of liquor was made liable to three months' rigorous imprisonment, even on a first conviction. 36 P.R. 1866. **J**

(4) **Joint possession of several persons—whether an offence.**

See notes under S. 51, *infra*. **K**

(5) **Customary weight of 'ser'—95 tolas—Unlicensed vendor—Selling by retail—Possession of weight of 96 tolas—Not punishable.**

This section provides that the quantity of country liquor unlicensed vendors may sell, should not be more than one '*ser*'.

Although the Government hold by means of their legislative enactments that a '*ser*' is a weight of tolas, this contention of the Government would not supersede the *customary* weight of a ser, viz., 95 tolas. Therefore when an unlicensed vendor was in possession of only 96 tolas of country liquor, it was *held* that the excess of one tola over the local weight is not sufficient to warrant the presumption of the accused's guilt. 3 A. 404. **L**

N.B.—It is to be noted the decision in 3 A. 404 just quoted was given before the passing of the present Excise Act of 1896. Since then, "Ser" has been very clearly defined as measuring eighty tolas.

Dubitante, whether the ruling in 3 A. 404 will still hold good even after the passing of this Act. (*Vide* Note (1) to 3 A. 404). **M**

(6) **Knowledge of illegal possession of more than the specified quantity, necessary.**

(a) FACT OF POSSESSION IS NO PROOF OF SUCH KNOWLEDGE.

To convict a person under this section, it is necessary to prove guilty knowledge and the fact of possession of an illegal quantity of liquor is not of itself sufficient to justify a conviction under the Excise Act. 3 A. 404 (407). **N**

(b) GUILTY KNOWLEDGE WHEN MAY BE PRESUMED.

(i) Such guilty knowledge may be presumed or inferred from the mere fact of possession if the quantity of liquor found with the person charged is to a large extent in excess of the quantity defined in S. 3, *supra*. *Straight, J.* in 3 A. 404 (407). **O**

(ii) If such excess of quantity is very small, the presumption of guilty knowledge cannot be inferred with equal force. (*Ibid.*) **P**

1.—"No person shall in his possession....S. 3 (1) Cl. (n)"—(Concluded).

(iii) Such presumption can be made and a conviction might be had under this section from surrounding and collateral circumstances, irrespective of the quantity in excess of that specified in S. 3 and even though a very little quantity beyond the legitimate one is found in the possession of the person charged. (*Ibid.*) **Q**

(iv) When a person possesses a certain quantity of liquor which is very nearly the quantity of liquor specified in S. 3 and the excess, if any, is only very small in quantity, it is not proper to assume that he was knowingly in possession of an illegal excess quantity of liquor. Because, for a conviction under this section, knowledge of the illegal possession of any quantity of liquor in excess of that specified in S. 3 is necessary. 3 A. 404. **R**

2.—"Unless he is permitted to manufacture or sell the same."

But licensed persons allowed to possess more than one Ser.

Under the provisions of Ss. 20 & 21 *supra*, licensed manufacturers or vendors or persons duly authorised to supply licensed vendors may have in their possession more than the quantities of liquor or drugs mentioned in S. 3 Cl. (*k*) above. 3 A. 404. **S**

3.—"Any foreign spirit of foreign fermented liquor."

(1) **Younger's beer.**

'Younger's Monk Brand Beer comes under the description of foreign fermented liquor.' U.B.R. (1909), Excise p. 7. **T**

(2) **Distillery liquor.**

Distillery liquor, and liquor made to a high degree of strength are to be deemed as foreign liquors according to the special order of the Local Government. U. B. R. (1892-96) Excise p. 87. **U**

(3) **Shamshu is foreign spirit.**

Shamshu, if it comes from a distillery, is converted into a foreign spirit. (*Ibid*). **V**

(4) **Spirit mixed with *lahan* whether country or foreign spirit.**

A mixture of spirit with *lahan* is still country spirit within the definiton of S. 3 *supra*, and the fact of *lahan* being mixed with it makes no difference as the whole is liquor containing alcohol obtained by distillation. 10 P. R. 1901 (Cr.). **W**

(4) **Beer from Mandalay Brewery.**

For the purposes of the Excise Act, beer manufactured at the Mandalay Brewery shall be deemed to be foreign fermented liquor. (*Vide* Finance and Commerce, Notification No. 42, dated 26th June 1890 and Financial Department Notification, No. 37, dated 14th August 1895). **X**

N.B.—For further notes as to what are foreign spirits and what country spirits and the way to find out whether a spirit is foreign or country etc., see notes to S. 3, *supra*. **Y**

(5) **Burden of proving spirits to be *foreign*.**

(*a*) ORDINARY PRESUMPTION.

Ordinarily the presumption, with regard to spirits, is that they are country spirits. U. B. R. (1892-96) Excise p. 87-90. **Z**

3.—"Any foreign spirit of foreign fermented liquor"—(Concluded).

(*b*) HIGH DEGREE OF STRENGTH—PRESUMPTION SHIFTS.

It can be said generally that a high degree of strength is an indication that liquor has come from a distillery. (*Ibid*). **A**

(*c*) **Distillery liquor—Presumption.**

Unless there are special circumstances to show that spirit found in the possession of a person, other than a licensed vendor of distillery spirits, is distillary spirit, the rule with respect to such spirits, is that they should be presumed to be country spirits till the contrary is established by the accused. U. B. R. (1892-96) Excise p. 87. **B**

4.—"Purchased by any person for his private use, and not for sale."

(1) **Purchase for private use—No offence.**

If it is clear from the proceedings that foreign spirit found in the possession of an accused person had been purchased by him for his private use, he cannot be convicted under the section even though in possession of more than the legitimate quality as nothing in S. 30 of the Act extends to such a person. U. B. R. (1892—1896) Vol. I p. 97. **C**

(2) **Possession of illegal quantities of foreign fermented liquor—Plea of "*private use*" Burden of proof.**

(*a*) *Onus* ON THE ACCUSED.

(i) As this proviso to section 30 is a sort of special exeception to the general rule laid down in the section, the burden of proving the circumstances bringing him under the exception lies according to section 105 of the Evidence Act on the accused, if he wishes to seek the protection afforded by the proviso to section 30 of this Act. U. B. R. (1909) and 5 L. B. R. p. 52 (**F. B.**) = 2 Ind Cas. 543 Excsie 7. **D**

(ii) Possession of more thon 12 quarts of beer being *prima facie* illegal, it is for the accused when charged with the illegal possession to prove that he purchased the beer for his private use and not for sale. U. B. R. (1909) Excise p. 7 at p. (9) and 5 L. B R. 52. See also (1906) 1 U. B. R. (1904-1906) Excise p. 7 (*dissenting from* (1905) 11 Bur. L. R. 227). **E**

(iii) In considering the degree of proof that may be required in such cases, the surrounding circumstances may have to be taken into account and the burden will lie lightly or heavily according as the possession is reasonable or otherwise. 5 L. B. R. p. 52. **F**

(A) The following are some of the circumstances which may tend to lighten the burden :—

(i) The fact that the accused can easily afford to buy liquor ;

(ii) The fact that he is a rich man ;

(iii That he is in the *habit* of consuming it himself occasionally at any rate ;

(iv) That he is in the of habit placing it before his guests ;

(v) The fact that the quantity found in his possession is not unreasonable for those purposes ;

(vi) If all or any of the above facts are patent in themselves. 5 L.B.R. p. 52. ; **G**

4.—"Purchased by any person for his private use, and not for sale" —(*Concluded*).

(B) The following are some of the circumstances which are against him :—

i. The fact that the accused is a *petty trader*

ii. That his position and income are not such as might enable him to buy the quantity of beer in his possession for his personal use or for the entertainment of his friends. (*Ibid*). **H**

(*b*) SAME PLEA SET UP BY A BURMAN —WHAT ELSE TO BE PROVED.

If the accused in such a case is a Burman in Upper Burma it will be necessary for him to show in addition that he purchased legally ; otherwise his defence would avail him nothing. (*Ibid*). **H-1**

(*c*) BURDEN ON THE PROSECUTION.

But see the following case (which was ultimately overruled by 5 L.B.R. p. 52, **F.B.**) **I**

There is no authority for the presumption that liquor of which an accused person is in possession in excess of the quantities specified in S. 3, *supra* is for sale. If the accused alleges that any foreign spirit or foreign fermented liquor in his possession is for his private use and not for sale, it is for the *prosecution* to show that he has it for sales (Per Fox, J.) Agabeg's B. L. R. Vol. XI, pt. V, p. 227. **J**

Spirit and fermented liquor from foreign territory subject to duty.

31. (1) A person shall not bring into any territory to which this Act extends any spirit manufactured at any place in India beyond the limits of British India, until he has obtained a pass therefor from such officer as the Local Government from time to time appoints in this behalf, and has paid in respect thereof,—

(*a*) if the Local Government has fixed a duty under clause *a* of section 7 for like spirit manufactured in the part of the territory into which the spirit is to be brought, that duty, or,

(*b*) if the Local Government has not fixed a duty under that clause for like spirit manufactured in that part, a duty at such rate as the Local Government from time to time prescribes in this behalf, not exceeding the highest rate leviable, under the law for the time being in force, on spirit imported into British India by sea.

(2) The provisions of sub-section 1 with respect to spirit shall apply to fermented liquor also, with this modification, that the duty to be paid in respect of the liquor shall be the duty leviable on like liquor under the Indian Tariff Act, VIII of 1894, [*VIII of* 1894] or such lower duty as the Local Government having regard to the rate or rates of duty for the time being leviable under clause *a* of section 8, may from time to time prescribe.

(3) If any question arises as to the duty to be charged on any spirit or fermented liquor under this section, the decision of the Local Government thereon shall be final.

Spirit and fermented liquor from territory beyond India subject to duty.

32. (1) The Governor-General in Council may, from time to time, by notification in the *Gazette of India*, impose such duty as he thinks fit on any spirit or fermented liquor brought by land from beyond the limts of India into any territory to which this Act extends, or into any specified part thereof, and may alter or abolish any duty so imposed.

(2) When any duty is imposed under this section, the Governor-General in Council may by rule prescribe the time, place, and manner of payment of the same.

CHAPTER VI.

OFFICERS AND THEIR POWERS.

Collectors may appoint Excise officers.

33. The Collector may appoint persons, by name or by virtue of their office, to be officers for the collection of the excise-revenue and for the prevention of offences against this Act, and the officers so appointed shall, in addition to the ordinary designations (if any), be styled Exise-officers.

Recovery of arrears of fees.

34. The Collector may recover any amount due to the Government under this Act or the rules made hereunder, by distress and sale of the moveable property of the person from whom such amount is due or of his surety, or by any other process for the time being in force for the recovery of arrears of land-revenue [1] due from landholders or from farmers of land or their sureties.

(Notes).

1.—" Or by any other process.... land revenue."

(1) **Sale of land for recovery of arrears of fees.**

As under Act XVII of 1876 so under the Act XXII of 1881 (Excise) land may be sold on account of arrears of fees due to the Government. 3 O.C. 79. **K**

(2) **Such sale to be subject to prior incumbrances.**

By S. 135 of Act XVII of 1876, when land is sold on account of arrears of land-revenue, other than the land on account of which the revenue is due, no interest, save those of the defaulter alone, shall be proceeded against, and no incumbrances created or contracts entered into by him, in good faith, shall be rendered invalid by such proceeding. Therefore a sale under S. 25 of Act XXII of 1881 is not a sale free from all prior incumbrances, but one subject to such incumbrances. 3 O.C. 79. **L**

Power of Excise-officers to inspect shops.

35. Any Excise-officer may enter and inspect at any time, by day or by night, the shop or premises in which any manufacturer or vendor licensed under this Act carries on the manufacture of country spirit, or the sale of country spirit, country fermented liquor, or intoxicating drugs.

Power of Excise-officers to arrest person carrying spirit, etc., liable to confiscation.

36. Any Excise-officer may stop and detain any person carrying any spirit, fermented liquor, or intoxicating drug liable to confiscation under this Act, and may seize such spirit, liquor, or drug, together with any vessels, packages, or coverings in which it is contained, and any animals and conveyances used sn carrying it, and may also arrest the person in whose possession uich spirit, liquor, or drug is found.

(Notes).

General.

(1) **Section—What it deals with.**

S. 36 gives an excise officer power to arrest under *certain circumstances*. 20 A. 70 (72). **M**

(2) **Difference between Ss. 36, 37 & 38.**

Under S. 36 of Act XII of 1896 an Excise-officer under *certain circumstances* has power to arrest. Under S 37 an Excise-officer *receiving a certain monthly salary* has power to arrest. Under S. 38 *certain Excise-officers* have power to arrest. (*Ibid.*) **N**

Power of Excise-officers to arrest persons in possession of article liable to confiscation, and to seize article.

37. Any Excise-officer in the receipt of a monthly salary of not less than ten rupees, or who receives an annual remuneration equivalent to such salary, may arrest [1] any person having in his possession any article liable to confiscation under this Act or engaged in the unlawful sale of any spirit, fermented liquor or intoxicating drug, and may seize such article, spirit, liquor or drug.

(Notes).

I.—"May arrest."

(1) **Arrest generally unnecessary.**

Although an arrest under this section of a person engaged in the unlawful sale of spirit, etc., is legal, "it seems generally a piece of needless severity to arrest a licensee at all." U.B.R. (1897—1901), Vol. I (Cr.), p. 182 (183). **O**

(2) **Rescuing persons so arrested—Punishable under the Penal Code.**

Where any person rescues persons arrested by an Excise-officer for having contravened the provisions of the excise law, such person will be liable to be punished under the Indian Penal Code (Act XLV of 1860) for the offences of "assaulting a public servant in execution of his duties," and of "forcibly rescuing persons from lawful custody" under Ss. 353 and 225. 4 C.W.N. 245. **P**

Power of Excise-officer to search on information of illicit manufacture or possession.

38. Whenever any Excise-officer in receipt of such monthly salary or annual remuneration as aforesaid has reason to believe, from information given by any person (which information shall be taken down in writing), that in any place spirit is unlawfully manufactured, or any article liable to confiscation under this Act is kept or concealed, such officer may, after sunrise and before sunset (but always in the presence of an officer of police [1] in the receipt of a monthly salary of not less than ten rupees, unless the Excise-officer is himself such an officer of police), enter into such place and in case of resistance may break open any door and force and remove any other obstacle to such entry, and may seize and carry away such spirit or article, and may also arrest the occupier of the place with all other persons concerned in the manufacture of such spirit, or in the keeping and concealing of such article.

(Notes).

General.

Whether Cr. P.C. affects this section.

From the wording of this section it is not necessary for an Excise-officer to conduct the search under the provisions of Criminal Procedure Code; for, by S. 5 (2), all offences under any other law (*i. e.*, other than I.P. Code) shall be enquired into, investigated, tried and otherwise dealt with according to the same provisions but subject to any enactment for the time being in force regulating the manner or place of, investigating, inquiring into, trying or otherwise dealing with such offences. Since S. 38 of the Excise Act, therefore, describes the manner in which certain searches are to be conducted, that section would seem to regulate such searches and not the provisions of the Criminal Procedure Code. 4 L.B.R. 121. **Q**

1.—"But always in the presence of an officer of Police."

(1) **Object of this provision.**

Though this section requires that an Excise-officer should take a police officer of a certain rank with him when he goes to search any place on information of illicit manufacture, possession or concealment, this provision seems more as a safe-guard to him and for his protection than as a duty on such Excise-officer, the infringement of which would render his act illegal. 4 C.W.N. 245. **R**

N.B.—Though this and the following are decisions under the Bengal Excise Act, the principles underlying these rulings are equally applicable to this Act.

I.—"But always in the presence of an officer of Police"—(Concluded).

(2) **Distinction between this section and S. 37 & S. 36.**

While arresting a person who contravenes the Excise Law, no police officer's presence is necessary ; his presence is required when he searches any place where spirit is unlawfully manufactured or any exciseable article liable to confiscation is kept or concealed. 4 C.W.N. 245 (246). **S**

(3) **Search by an Excise officer not in the presence of the Police—Legality of arrest.**

Although this section enjoins that when an Excise-officer enters and searches a place, he should have a police-officer of certain rank with him, such person, in exercising his power of arrest under the last two sections requires the presence of no police officer whatever. Therefore although an entry or search without a police-officer may be unlawful, an arrest of certain persons after having entered legally or illegally would be lawful as his power to arrest illegal manufacturers and seize the materials for such manufacture remains uncurbed under Ss. 36 and 37. (*Ibid.*) **T**

(4) **Subsequent procedure.**

The Magistrate should report to the District Magistrate whether the provisions of this section are fully complied with or not. If there was any irregularity in the search, the Magistrate should explain why he did not bring it to notice at once. Burma Circular No. 8 (Cr.) of 1892. **U**

Collector may issue warrant of arrest in certain cases.

39. The Collector may issue his warrant for the arrest of any person whom he has reason to believe, either from information in writing or from the proceedings in any other case under this Act or any other law, to be engaged in the unlawful sale of spirit, or fermented liquor or intoxicating drugs, or to have in his possession any article liable to confiscation under this Act.

Collector may issue search warrant.

40. (1) The Collector may issue his warrant for the search of any place in which he has reason to believe, either from information in writing or from the proceedings in any other case under this Act or any other law, that spirit is unlawfully manufactured, or that any spirit, fermented liquor or intoxicating drug liable to confiscation under this Act, is kept or concealed.

(2) Such warrant may be executed by any Excise-officer in the receipt of a monthly salary of not less than ten rupees at the time and in the manner prescribed in section 38.

(3) Whenever the Collector thinks that the search should be made after sunset and before sunrise on any particular day, he shall issue a warrant specially authorizing the search to be so made. Such warrant may be executed by any Excise-officer as aforesaid in the

manner prescribed in section 38, and shall cease to be in force at sunrise on the day next following.

Excise-officer to report arrest, etc., and to take person arrested to Magistrate.

41. Whenever an Excise-officer arrests any person [1], or seizes any article liable to confiscation under this Act or enters any place for the purpose of searching for any such article, he shall, within twenty-four hours thereafter, make a full report of all the particulars of such arrest, seizure or search to his official superior, and, unless acting under the warrant of the Collector, shall take the person arrested or the article seized with all convenient despatch to the Magistrate [2] for trial or adjudication.

(Notes).

General.

What is contemplated by this section.

It appears that this section contemplates that the Excise-officer who arrests any person under S. 36, S. 37 or S 38 could, unless he was acting under the warrant of the Collector, give the Magistrate jurisdiction to act. **Y**

1.—"Whenever an Excise-officer arrests any person."

S. 41 to be read in harmony with S. 57—Excise officer under this section same as one under S. 47.

S. 41 should be read in harmony with S. 57, *infra* and an Excise-officer who has power in certain events, (unless he was acting under the warrant of the Collector), to take the case before a Magistrate under this section should be treated as an Excise-officer within the meaning of S. 57. 20 A. 70 (72). **W**

2.—"Shall take the person arrested....to the Magistrate."

(1) **Power to arrest co-extensive with power to send the person to the Magistrate.**

Under this section, the power to arrest includes the power to send the accused to a Magistrate. U.B.R. (1897—1901), Vol. I (Cr.), p. 182. **X**

(2) **Excise-officer—Jurisdiction—Personally interested.**

S. 556 of the Code of Criminal Procedure does not debar an Excise-officer from trying a case under the Excise Act, XII of 1896, in which he himself is responsible for the prosecution. A.W.N. (1908) 95=5 A.L.J 357=7 Cr. L.J. 393. **Y**

Procedure after arrest or seizure.

42. Whenever any person is arrested or any article is seized under the warrant of a Collector issued under this Act, the officer making such arrest or seizure shall, within twenty-four hours thereafter, take the person arrested or the article seized to the Collector, and the Collector, after such enquiry as he thinks necessary, shall send such person or article to the nearest Magistrate, or shall order the immediate discharge of such person or the release of such article.

Police to aid Excise-officers.

43. All police officers are required to aid the Excise-officers in the due execution of this Act, upon request made by such Excise-officers.

Power for Local Government to invest Police-officers with powers of Excise-officers.

44. (1) The Local Government may, from time to time, invest[1] either by name or in virtue of his office—

(*a*) any police-officer with the powers conferred on Excise-officers by section 36 of this Act;

(*b*) any police-officer in charge of a station or any police officer of or above the grade of head-constable or sergeant with the powers conferred on Excise-officers by sections 37 and 38 of this Act.

(2) Every officer so invested shall, for all purposes connected with the exercise of these powers, be deemed to be an Excise-officer within the meaning of this Act.

(Notes).

1.—"The Local Government may from time to time invest."

(1) **Power of Local Government—Police officer invested with powers of Excise-officer.**

The Local Government may, under the powers given by this section invest a police-officer with the powers of an Excise-officer under Ss. 36, 37 and 38 of this Act. A.W.N. (1896) 105. **Z**

(2) **Assistant Superintendent of Police in Burmah has such power.**

An Assistant Superintendent of Police in Upper Burmah has the powers of an Excise-officer under Ss. 37 and 38 of Act XII of 1896. **A**

(*Vide* Financial and Commerce Department Notification No. 84, dated 16th October 1888.)

N.B.—For notification under this section concerning Upper Burmah, see *Burmah Gazette*, October 20, 1888, Part I, p. 476.

(3) **Deputy Inspector of Police invested with powers of an Excise-officer.**

A Deputy Inspector of Police is invested with the powers of an Excise-officer by the Punjab Government. (*Vide* Punjab Government Notification No. 735, dated 26th March 1885.) **B**

CHAPTER VII.

PENALTIES.[1]

For illegally manufacturing spirit or liquor.

45. (1) Whoever in contravention of section 5 constructs, works or possesses a distillery, still or brewery, or makes fermented liquor,[2] shall be punished with imprisonment[3] for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both.

(2) All spirit and liquor made in contravention of section 5, and all materials and implements collected for the purpose of such manufacture, shall be liable to confiscation. [4]

(Notes).

General.

The general purport of S. 45 and the following sections.

S. 45 and the following sections provide for regulations which bind the licensee and subject the license to certain conditions. 10 A. 577. **C**

1.—"Penalties."

(1) **Two objects of imposing penalty.**

(*a*) There are certain cases in which the imposition of a penalty is to be construed as intended to prohibit the act to which the section of the Act or statute refers. **D**

(*b*) There are other cases in which that penalty should be regarded as only a means for protecting the revenue. 16 C. 436 (439). **D-1**

(2) **An Act intended only for the protection of revenue—Object of penalty.**

In an Act intended only for the raising of the revenue and the protection of that revenue, a clause imposing a penalty may well be construed not as prohibiting a transaction in such a sense as to make it illegal and void but as providing a means of enforcing the liability of the person on whom the penalty is imposed. (*Ibid.*) **E**

2.—"Constructs....fermented liquor."

(1) **Tapping one's own toddy tree—No offence.**

As it is not the intention of the Government to prevent a person from tapping his own toddy tree, a person tapping and drawing '*tari*' from his own toddy tree, does not thereby commit an offence under this section. L.B.R. (1900-1902), Vol. I, p. 214 (See, also, the Financial Commissioner's Circular No. 10 of 1892 at p. 230 of the Excise Manual in Burmah). **F**

N.B.—But this circular however could not have been intended to alter and could not in fact have altered the provisions of the Excise Act as to the *possession* of fermented liquor. L.B.R. (1900-1902), Vol. I, p. 214 (Cr.).

(2) **Manufacture of tari.**

(*a*) TAPPING 'TARI' FREE, WHETHER MANUFACTURE.

Tapping or extracting the sap of a *tari* tree is not manufacturing *tari*. U.B.R. (1905) Excise 45, p. 3, and L.B.P.J.P. 336. **G**

(*b*) LEAVING SWEET TARI TO FERMENT.

Leaving sweet *tari* to ferment is not *manufacturing tari* within the meaning of Ss. 5 and 45 of this Act. (*Ibid.*) **H**

(*c*) WHETHER THE OFFENCE OF MANUFACTURE OF TARI POSSIBLE.

As sweet tari, the moment it is tapped, is fermented liquor within the meaning of the Excise Act, the offence of manufacturing fermented *tari* is therefore a physical impossibility. U.B.R. (1905) Excise, 45 p. 3. **I**

N.B.—But a person who taps *tari* trees and collects more than four reputed quart bottles of *tari* at one time may be convicted of illegally *possessing* tari. (*Ibid.*) **J**

2.—"Constructs....fermented liquor"—(Concluded).

(3) **Hastening fermentation artificially.**

Hastening fermentation by artificial means is not "manufacturing" fermented liquor. U.B.R. (1905) Excise, p. 5. **K**

(4) **Necessary point to be proved for a conviction under this section.**

In a conviction under this section it must be clearly established that the implements for preparing fermented liquor were found in the house of the accused and everything that took place to make his act an offence took place on his premises. It is not sufficient to show that the accused assisted a third person to empty a vessel containing *lahan* into the cowbyre. 2 P.W.R. 1907. **L**

3.—"Shall be punished with imprisonment."

(1) **No offence under this Act, punishable with more than 6 months' imprisonment.**

It is to be noted that no breach of any of the provisions of the Excise Act is punishable with imprisonment for a term exceeding six months. Hence under S. 40 of the Indian Penal Code, para. 3 (*i.e.*, for the purposes of Ss. 141, 176, 177, 201, 202, 212, 216 and 441), it is not an *offence* within the meaning of the Indian Penal Code. L.B R. (1900-1902), Vol. I, p. 308 (310). **M**

(2) **Imprisonment in default of fine illegal.**

Imprisonment in default of fine is illegal under S. 65 of the Penal Code as that section applies where an offence is punishable not with imprisonment *or* fine but with imprisonment *as well as* fine which an offence under S. 45 of the Excise Act is. U.B.R. (1892-1896), Vol. I, p. 93. **N**

(3) **Property liable to confiscation, devolving on the accused, may be attached.**

In an order for the sale of liquor, part of which was illegally sold, if the property liable to be confiscated has by devolution or otherwise become the property of the accused, it may be attached and sold. 22 A. 441. **O**

(4) **Conviction for illegal sale and possession of the same liquor bad.**

Where a Magistrate convicts an accused (*a*) for the sale of and (*b*) for the possession of the *same* liquor, the double conviction would be held bad. L.B.R. (1872-1892), 350 (353). **P**

(5) **Illicit working of a still and illegal possession of spirit—Separate convictions and sentences—Legality.**

(*a*) Under the provisions of S. 35 of the Criminal Procedure Code (*vide* Explanation and illustrations to S. 35, Cr. P.C.), illegal possession of spirit and illicit working of a still are not distinct offences and the offender is not liable to the *several* punishments prescribed therefor and may not be sentenced for more than one of the offences. L.B.R. (1900—1902), Vol. I, p. 33. **Q**

(*b*) As it is perfectly conceivable that a man may manufacture liquor without being in possession of it, it is possible for a person to contravene S. 5 without contravening S. 30, and to contravene S. 30 without contravening S. 5 and to contravene both at the same time. U.B.R. (1892-1896) Vol. I, p. 93. **R**

(6) **Distilling spirit and possessing spirit not distinct offences—Double sentence illegal.**

Illegally manufacturing spirit and possession of an illegal quantity of the same are not distinct offences and a double sentence is therefore illegal. (See S. 71, I.P.C. and S. 235, Cr. P.C.). In such a case as this though separate convictions for two offences are legal, it is neither necessary nor desirable to record a separate conviction for illegal possession when illegal manufacture has been proved. (1904) U.B.R. Excise, p. 1=Penal Code, p. 1. [See also 1 L.B.R. (1900), p. 33]. **S**

4.—"Shall be liable to confiscation."

Addition of order of confiscation—Applicability—S. 414, Cr. P.C.

The addition of an order of confiscation to a sentence of imprisonment under this section does not render appealable a sentence otherwise not appealable, as the order of confiscation is not part of the sentence. L.B.R. (1900—1902) Vol. I, p. 3 (4). **T**

46. (1) Any person who—

For illegally introducing country spirit.

(*a*) without a special pass from the Collector introduces, into the limits fixed for the consumption of spirit made at a distillery established under section 6, any country spirit manufactured at another place, or

For illegally removing spirit or fermented liquor.

(*b*) in contravention of section 7 or section 8, or of any rule made under section 9 or section 10, removes any spirit from a distillery or any fermented liquor from a brewery, or

For illegally importing spirit or fermented liquor.

(*c*) in contravention of section 31, brings any spirit or fermented liquor [1] into any territory to which this Act extends, or

For importing spirit, fermented liquor, or intoxicating drug without paying duty.

(*d*) without payment of such duty (if any) as may for the time being be payable in pursuance of a notification under section 32, brings any spirit or fermented liquor into any territory to which this Act extends,

shall be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both.

(2) All such spirit or fermented liquor, together with the vessels containing the same [2], and any animals and conveyances used in carrying it, shall be liable to confiscation.

1—"In contravention of S. 31 brings any spirit or fermented liquor."

Introduction of foreign spirit, illegal.

This section makes the introduction of any quantity of foreign spirit illegal, without regard to the quantity of the liquor or the purpose for which it might have been introduced into the territories to which under this Act extends. 14 P.R.No. 1907 (Cr. J.). **U**

N.B.—The absence of necessity or the inadvisability of a prosecution in any particular case is quite another matter. (*Ibid.*) **V**

2.—"Together with the vessels containing the same."

Boat and steamers not to be confiscated.

(*a*) As a matter of sound judicial discretion, it is improper to confiscate under this section a boat in which certain exciseable articles are carried in contravention of Excise Law, unless the owner of the boat is in some way implicated in the offence under the Excise Law. 12 C.W.N. 139. **W**

() If it were to be held otherwise by interpreting the section literally, the principle by being strained a little, may lead to the following absurd conclusion:

If a little quantity of spirituous liquor were to be found in a big ocean steamer, the steamer may be held liable to confiscation under this section. (*Ibid.*) **X**

For contravening rules prescribed by Chief Revenue authority.

47. Any person who, except in cases herein otherwise provided for, wilfully contravenes any rule made under section 9 or section 10, shall be punished with fine not exceeding one hundred rupees.

For illegally cultivating hemp or collecting the spontaneous growth of hemp, or preparing, possessing, importing, exporting or transporting intoxicating drugs.

48. (1) Any person who, in contravention of any provision of Chapter III or any rule thereunder, or without payment of such duty (if any) as may for the time being be payable in pursuance of a notification under section 13,—

(*a*) cultivates hemp, or

(*b*) collects the spontaneous growth of the hemp plant, or

(*c*) prepares any intoxicating drug , or

(*d*) possesses any intoxicating drug, or

(*e*) imports, exports, or transports any intoxicating drug,

shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

(2) Any intoxicating drug in respect of which an offence has been committed under this section, together with the vessels containing the same, and any animals and conveyances used in carrying it, shall be liable to confiscation.

(Notes).

1.—"Or prepares any intoxicating drug."

Preparation of "Chandu," not punishable.

The illegal manufacture or preparation of "Chandu" which is a preparation from opium is not an offence under this section as according to the terms of S. 3 (*j*) of this Act, "Chandu" does not come under the term "intoxicating drug." 1884 A.W.N. 213. **Y & Z**

N.B.—This may be an offence under the Opium Act I of 1878 and not under this Act. (*Ibid.*)

49. Any person[1] who, in contravention of section 21[2], sells any spirit, fermented liquor, or intoxicating drug[3], shall be punished[4] with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both.

For illicitly selling spirit, etc.

(Notes).

1.—"Any person."

(1) **Sale by a *servant* of license-holders whether punishable.**

A servant of a license-holder, who is temporarily in charge of the shop of his master and sells liquor, though not holding a license himself and without any authorization under the terms of his master's license, is not punishable under the section. Neither he nor the license-holder can be held guilty of having sold liquor in contravention of S. 21, *supra*. A.W.N. (1894) 201. **A & B**

(2) **Sale by a servant of licensee's agent or manager.**

Unless there is anything to show that the agent or manager of a licensee was privy to, knew of, or connived at, the act of illegal sale of his servant, such agent or manager of the licensed vendor cannot properly be convicted under this section for an act of his servant. L.B.R.P.J. (1893--1900), p. 489. **C**

(3) **Master liable for the acts of his servant.**

When any servant in selling liquor contravenes the provisions of this Act or commits a breach of any of the conditions under which the license is granted, his master may equally be held liable for such offence. 19 P.R. 1878 (Cr.). **D**

(*a*) PROOF OF KNOWLEDGE UNNECESSARY.

It is to be noted that where a licensed retail vendor is made liable to penalties under this Act for any act of his servant, forbidden by this Act, it is unnecessary to show that the master knew or authorised the particular illegal act. It is quite sufficient to prove that the servant had general authority on his master's behalf. *Per Plowden, J.*, 19 P.R. 1878 (Cr.).

(*b*) ABSENCE OF KNOWLEDGE GROUND FOR MITIGATION. **E**

Absence of such knowledge on the part of or of such authority from his master will be a ground for mitigating the offence and hence the penalty. (*Ibid.*) **F**

(4) **Heir of licensed vendor—Sale by him after licensee's death—Legality thereof.**

As a license for the sale of liquor does not on the licensee's death devolve upon his heir or partner in business, his heir or partner in business cannot continue to sell liquor even though the whole period for which the license was granted had not fully expired. 22 A. 441. **G**

2.—"In contravention of section 21."

(1) **Sale without a license—License taken or renewed some time after, dating back to the former period—Sale not punishable.**

Where a person is granted a license to sell spirituous and fermented liquors for a certain period and he goes on selling such liquor without a license for sometime after the expiry of the licensed period, he cannot be convicted under this section if he had renewed the license sometime after the expiry of the licensed period, such renewed license dating back to the period in which he sold liquor without a license. 1 A. 630. **H**

2.—"In contravention of section 21"—(Continued).

N.B.—If the license renewed some time after dated back to the period in which liquor was sold without a license, a person cannot be said to have contravened the provisions of S. 21. (*Ibid.*) **I**

(i) RENEWAL IS CONDONATION.

The renewal without any objection of the license, dating back from the date on which the previous license had expired and the payment and acceptance of the whole fee due under the license are strong circumstances of condonement on the part of the Government of any little neglect to renew the license, which the person may have been guilty of and they are enough to show that such person was entitled to sell spirituous liquors without any interruption from the date on which he first took the license to the date on which such renewed license will expire. 1 A. 630 (632). **J**

(ii) IF RENEWED AFTER CONVICTION, IT IS NO CONDONATION.

Where the lapsing of the first license is not noticed by the authorities and is only brought to their knowledge by the licensee himself while renewing the same, and they simply renew the license and accept the whole fee for the new period by anticipation and where there is nothing to show that such person did not intend to renew the license or that the Collector had recalled it, the conviction would be bad.

But if none of the circumstances of condonement and estoppel above referred to exist and the license for the sale of spirituous and fermented liquors by retail had clearly and simply expired on a certain date and the accused did not attempt to renew it, till after he had been convicted before the Magistrate for selling spirituous liquors, without a license, such person could rightly be convicted for having violated the provisions of S. 21. 1 A. 635 (636). **K**

(iii) ACCEPTANCE OF FEE IN IGNORANCE IS NO CONDONATION.

(*a*) The acceptance by the excise authorities of an excise fee in ignorance of a contravention of the law is no condonation of the offence if the offence had been committed. It would not warrant the quashing of a conviction for sales made prior to the acceptance of the fee if those sales were in fact illegal; it might be a ground for inflicting a light penalty and not for quashing the conviction. 1 A. 638 (641). **L**

(*b*) In the same way where a license for the sale of spirituous and fermented liquors by retail expired and the license-holder gave no notice of his intention not to renew the license, nor had the license been recalled by the Collector but the liquor was sold without the renewal of the license, for a week, by the servants of the license-holder, they cannot be convicted under this section. 1 A. 638. **M**

N.B.—(i) But they could be convicted of "not having paid the monthly fee." (*Ibid*).

(ii) It is to be noted that neither the Act as it originally stood nor the present Act contains any rules as to the period within which a license is to be renewed. (*Ibid*).

(2) **Selling spirituous liquor in a way not provided for by the license.**

(*a*) WHETHER IT IS PUNISHABLE UNDER S. 49 OR S. 52.

Under S. 21, no person can sell liquor, etc., without a license, and if he has a license, he can sell only to the precise extent defined in his license. Therefore, if a licensee sell to a person, or at a place, or a kind of liquor to which the license does not extend, he is *virtually* selling without a license and will be punishable under S. 49 and not under S. 52.U.B.R. (1897-1901), Vol. 1, p. 189 (191) (Cr.). **N**

2.—"In contravention of section 21"—(Concluded).

(*b*) SALE TO BURMANS PUNISHABLE UNDER THIS SECTION.

Therefore when a licensee in Upper Burmah sells spirits to a Burman, he is selling without a license, or at least not in accordance with its terms, inasmuch as there is no license to sell to Burmans but only to persons other than Burmans and thus transgresses the prohibition in S. 21 just as much as if he had no license at all and hence makes himself liable under S. 49 and not under S. 52 merely. U.B.R. (1897—1901) Vol. I (Cr.), p. 189 (192); U.B.R. (1892—1896) Vol. I. p. 95. **O**

(*c*) THE BURMAN, AN ABETTOR.

(i) In the above case, the Burman purchaser of liquor (from the holder of a license in Upper Burmah) will be held liable as an abettor and should be tried as well, as person abetted. U.B.R. (1892—96), Vol. I, (Cr. Revn. No. 1617 of 1892), 100. **P**

(ii) His evidence is of course open to the usual objection and much caution is required in receiving his evidence. (*Ibid.*) **Q**

(iii) Although the Burman is an accomplice and his evidence should be corroborated by independent evidence, the evidence of an independent witness as to the illegal purchase is not essential if the circumstances, in which he is found, fully corroborate his evidence. (*Ibid.*) **R**

(*d*) BURMAN, IF ONLY A SERVANT OF SOME OTHER.

The plea, that the liquor was not sold to the Burman but to some person entitled to buy, of whom he is a servant or for whom he was buying, if raised, should be clearly proved. If a licensee lets a Burman have liquor at all on payment of money, he runs a risk. U.B.R. (1892—96), Vol. I, p. 100. **S**

(*e*) SELLING TO BURMAN THROUGH COOLY EQUALLY PROHIBITED.

(i) A Burman who buys liquor through a non-Burman cooly of his is equally punishable under the section as any other. U.B.R. (1892—1896), Vol. I, p. 101. **T**

(ii) If the liquor is sold to such cooly without the knowledge that it is for a Burman, the seller cannot be made liable under the Act. U.B.R. (1892—1896), Vol. I, p. 105. **U**

(3) **But possession of liquor by a Burman.**

Though law does not allow liquor to be sold to a Burman, it does not prohibit him from possessing certain quantities of liquor. U.B.R. (1892—96), Vol. I, p. 107. **V**

(4) **Compliance with provisions of S. 21—Slight illegality not punishable.**

It would be unnecessary to prosecute any person under this section, if the non-compliance with or the illegal contravention of the provisions of S. 21 by such person is very slight and showed no intention on the part of that person to cause any mischief against which the Excise Act is directed. 1 A. 630 (632 & 635). **W**

(5) **Little neglect or delay in taking out license, not punishable.**

It is not the intention of the Legislature to punish an innocent person who may be guilty of nothing but a very intelligible and excusable little neglect or delay in taking out a license. 1 A. 630 (635). **X**

3.—"Sells any spirit, fermented liquor or intoxicating drug."

(1) **Transaction not for profit is no sale.**

A transaction on which no profit is made does not amount to a 'sale' within the meaning of S. 21 of the Act. So a person who though holding no license under the Act obtained some mythilated spirits from a shop for the secretary of a club and sent it from there to the club but made no profit on the transaction, was not held liable under S. 49. 31 A. 293 =6 A.L.J. 238=9 Cr.L.J. 503=2 Ind. Cas. 192. **Y**

(2) **Sale of tari, not fermented not punishable.**

Certain *pasis* extracted juice from palm trees and sold it to certain travellers. They were not held guilty under Ss. 49 and 21 of this Act as there was nothing to show that the '*tari*' sold was "fermented" within the meaning of Ss. 49 and 21. (1883) A.W.N. 238. **Z**

(3) **Evidence of sale.**

(*a*) The circumstances that several persons are found sitting in a room and consuming an intoxicating drug, that instruments for making and consuming the drug, and jars containing the drug and the usual paraphernalia of such a den are found in the same room, are sufficient to prove that the drug was exposed for sale and that the persons found in the room are those to whom it was being sold. A.W.N. (1902) 17.

N.B.—This is a case under the Opium Act, whose principle is equally applicable to this Act and S. 49. **A**

(*b*) The mere mechanical act of handing the liquor to the purchaser cannot be regarded as a *sale* for which an accused may be held liable. 17 C. 566. **B**

(4) **Evidence of general complaint inadmissible.**

The statements of witnesses as to the general complaint that the accused is in the habit of selling illicit liquor is not evidence against him. 2 P. W.R. 1907. **C**

4.—"Shall be punished."

(1) **Punishment to be in proportion with the degree of offence.**

Although this section warrants punishment of imprisonment for the term mentioned therein or of imposition of fine to the extent specified therein (see 3 A. 404 (405), the sentences passed under this section ought not to be, out of all proportion, to the character of the offence committed. 1 A. 630 (631). **D**

(2) **Guilty knowledge necessary for conviction under this section.**

In order to support a conviction under S. 49 for the contravention of the provisions of S. 21, it is necessary to prove:—

(*a*) A wilful attempt on the part of the accused to defraud the revenue due to the Government.

or (*b*) a wilful violation of the law as laid down in the Excise Act.

or (*c*) breach of any of the conditions under which the license is granted.

or (*d*) any intention on the part of the accused to cause any of the mischief against which the Excise Act is directed. 1 A. 630. **E**

4.—"Shall be punished"—(Concluded).

(3) **Conviction on the uncorroborated evidence of an accomplice bad.**

(*a*) A conviction for illegal *sale* of liquor by any person based on the uncorroborated testimony of a person who instigates the accused to sell liquor illegally cannot be sustained as such a person who procures and thus abets the illegal sale is an accomplice whose evidence is unworthy of credit unless corroborated in material particulars. L.B.R. (1872-1892). p. 146. **F**

(*b*) So also in a conviction for an illegal sale of liquor to a Burman by a licensee, the uncorroborated evidence of the accomplice and abettor, the Burman, is not sufficient to prove the offence. U.B.R. (1892-1896), Vol. I, p. 103. **G**

(4) **First offence—Punishment not to be severe—Fine sufficient.**

Where a person is found to have sold a larger quantity of spirit than he was authorized by law to sell and it is found that that was his first offence, fine would be a sufficient punishment as it is not intended that severity should be used towards person infringing in an ordinary way the provisions of the Excise Act. 5 C.P.L.R. 44 (Cr.). **H**

(5) **Summary procedure—No appeal.**

If any case under this section is tried summarily, law will allow no appeal therefrom. U.B.R. (1892-1896), Vol. I, p. 101. **I**

(6) **Trial of excise offences.**

After the passing of Act XII of 1896, excise offences should be tried under that Act only. U.B.R. (1892-1896), Vol. I, p. 107 (108). **J**

For permitting drunkenness, etc., in shop.

50. Any person licensed to sell retail spirit, or fermented liquor, or intoxicating drugs, who permits drunkenness, riot, or gaming in his shop, or permits persons of notoriously bad character to meet or remain therein, or receives any wearing apparel or other effects in barter for spirit, fermented liquor, or intoxicating drugs, shall be punished with fine which may extend to two hundred rupees.

For illegally possessing spirit or liquor.

51. Any person who possesses [1] any spirit or liquor [2] in contravention of section 30 [3] shall be punished [4] with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both; and the spirit or liquor, together with any vessels, packages, and coverings in which it is contained, and any animals and conveyances [5] used in carrying it, shall be liable to confiscation.

(Notes).

I.—"Any person who possesses."

(1) **Possession as agent—Not punishable.**

The possession of more than the authorised quantity of an intoxicating drug by any person as an agent or servant of a licensed vendor of drugs is not punishable unless such person has it in his possession on his own account. 12 P.R. 1878 (Cr.). **K**

(2) **Custody of exciseable articles on behalf of legal owner, whether illegal.**

A person with whom certain exciseable articles are left for safe custody during night by a licensed vendor of drugs cannot be held guilty of illegal possession of drugs under this section, in contravention of the provisions of the Excise Act, as such custody could not amount to "*possession*" contemplated by this section and as the custodian's possession is not his, but that of the legitimate owner. 25 A. 262 and L.B.R. (1903 1904), Vol II, p. 136. **L**

(3) **Possession during transit.**

Possession by an accused of liquor belonging to a licensed vendor during the course of transit to the vendor cannot make him liable for illegal possession. 9 C. 223. **M**

N.B.—The Courts must certainly, before convicting a person under this section inquire into the *purpose* of the possession and also into the *nature* of the possession. (*Ibid.*) **N**

(4) **Possession by a Burman.**

Although law prohibits sale of spirituous or fermented liquor to a Burman (for the abetment of which he may be convicted), it does not prohibit *possession* of such liquor by a Burman if he only complies with the restrictions and specified conditions imposed upon all persons by law under S. 30. U.B.R. (1892—96), Vol. I, Excise, p. 92. **O**

(5) **Possession of father and son—Presumption.**

Where liquor is found in the house of an accused, with whom his son also is living in the same house the possession must be deemed to be that of the accused who is the owner of the house unless joint possession is proved. The presence of the son in the house makes no difference whatever, unless the liquor is proved to have been held by the accused jointly with the son. (*Per Clark, C.J.*, and *Harrison, J.* 10 P. R. 1901 (Cr.), (*following*, (1897,) P.R. No. 13). **P**

(6) **Knowledge of possession to be proved.**

Possession to be punishable under this section must be possession with knowledge and assent. U.B.R. (1909) Excise p. 1 and U.B.R. (1892-96), I, 139. **Q**

(7) **Collection of toddy in pots on a tree constitutes possession.**

The collection of toddy in pots on a tree constitutes possession. So an unlicensed owner of a toddy tree will render himself liable under this section if he does not regulate the number of incisions, the number and capacity of the vessels set to catch the juice flowing therefrom and thereby lets the aggregate quantity of toddy contained in the vessels at any one time exceed four reputed quart bottles. U.B.R. (1892—96), Vol. I, p. 98. **R**

2.—"Any spirit, liquor."

(1) **Tari tapped from one's own toddy tree—Possession of more than the legal quantity—Punishable.**

Although a person may tap and draw '*tari*' from his own toddy tree without committing an offence punishable under S. 35 of this Act, yet the moment that a quantity of it larger than four quarts is in his possession, he commits an offence punishable under S. 41 of the Act, unless he has a license contemplated S. 30 of the Act. L.B.R. (1900—1902), Vol. I (Cr.), p. 214. **S**

(2) **Foreign fermented liquor—Possession of less than 12 quart bottles by Burman —No offence.**

The possession of foreign fermented liquor by a Burman in Upper Burmah up to twelve quart bottles is not an offence merely because such liquor may not be sold to him. U.B.R. (1892—96), Vol. I, 107. **T**

(3) **The possession of any preparation of hemp, whether punishable.**

The possession of every preparation of hemp is not punishable unless it is shown that such preparation is a *narcotic* product of hemp, *i.e.*, a product of the *narcotic* parts of the hemp plant. U.B.R. (1909) Excise p. 1. **U**

(4) **Possession of yeast balls, no offence.**

As yeast balls are not intoxicating drugs within the meaning of S. 3 (*j*) nor spirit or fermented liquor, the possession of yeast balls prior to their utilization for the manufacture of liquor is not punishable under this section or any other section of the Excise Act. L.B.R. (1872—92), 571 (572). **V**

(5) **So also possession of hemp.**

The Excise Act does not render the possession of hemp punishable, but only the possession of Ganja, bhang or charas on any preparation or admixture of the same, *i.e.*, the possession of narcotic productions of hemp. U.B.R. (1909), Excise p. 1. **W**

(6) **In the same way possession of "*Majum*."**

As it is conceivable that '*majum*' might be made of the seeds of hemp which are not narcotic, it is not necessarily a narcotic product of hemp, though it may be a product of hemp. Therefore the possession of '*majum*' is not punishable under this section unless it is clearly established that majum is always made of one or other of the three drugs Ganja, bhang or charas. U.B.R. (1909) Excise p. 1. **X**

(7) **Similarly possession of Kazawye.**

A person who possesses kazawye cannot be convicted under S. 51 as Kazawye is not a "fermanted liquor" within the meaning of S. 3 (*h*) the possession of which in excess of a certain quantity is forbidden. L.B.R. (1900—1902), Vol. I, p. 172. **Y**

(8) **Joint possession by several persons, whether an offence.**

This section must be understood also to prohibit the joint possession by several persons of more spirit or liquor than may be sold retail to one person. L.B.R. (1893—1900), p. 405. **Z**

3.—"In contravention of S. 30."

(1) **Transferee of licensee in good faith, in possession of excise articles, liable to be punished though not severally.**

Where a transfer of license is made in good faith by a licensed vendor of drugs, the offence of the transferee, of being in possession of more than the authorized quantities of such drugs, is liable to be punished under this section, as a license granted to a licensed retail vendor of drugs is not transferable, though such an offence may not be one calling for severe punishment. 12 P.R. 1878 (Cr.). **A**

(2) **Illegal possession of unauthorised quantities of drugs imported from foreign territory—No offence under S. 51.**

A person whether a licensed vendor or not, having in his possession unauthorised quantities of intoxicating drugs, imported by himself from foreign territory without a pass cannot be convicted under this section. 12 P.R. 1878 (Cr.). **B**

4.—"Shall be punished."

Award of imprisonment in default of payment of fine.

When a fine is imposed for an offence under this section, the Court is competent to award imprisonment in default of payment of fine. 6 P.R. 1872 (Cr.). **C**

5.—"Together with any vessel....conveyance."

Vessel or conveyance—Meaning of.

The concluding words of this section not having received judicial interpretation, it is a question for the discretion of the Magistrate in each case to decide whether a thing under consideration comes within the meaning of this section and so is liable to confiscation. L.B.R. (1893—1900), p. 633. **D**

For refusing to produce license, and for breach of rules and conditions.

52. Any person holding a license under this Act and refusing to produce the same [1] on the demand of any Excise-officer, and any person who breaks any rule under this Act [2], or any condition of a license granted under this Act [3] for the breach of which rule or condition no other penalty is hereby provided, shall be punished [4] with fine which may extend to fifty rupees [5].

(Notes).

General.

(1) **Scope of the section.**

S. 52 says in general terms that any person who breaks any rule made under the Act or any condition of a license granted under the Act for the breach of which rule no other penalty is herewith provided shall be punished with a fine of fifty rupees. 10 A. 577. **E**

(2) **Object of the section.**

It seems clear that this section was introduced *ex abundanti cautela* so that nothing should be left out. It is a contraction of the mesh of the net to prevent the escape of the smaller fry of fishy practices.

The more important offences against the Act are specially defined and pro- [illegible] U.B.R. (1897—1901), Vol. I (Cr.), p. 189 (at p. 191). **F**

1.—"And refusing to produce the same."

(1) **Refusal to produce punishable.**

If any person refuses to produce his license on the demand of an Excise-officer, he will be liable to be punished under this section. 1 A. 630 (p. 634). **G**

(2) **Only licensee punishable.**

Under this section, only the license-holder will be liable to punishment for refusing to produce the license. But any person will be liable for the breach of a condition of a license. U.B R. (1892—1896), Vol. I, p. 109 (at p. 110). **H**

2.—"And any person who breaks any rule made under this Act."

(1) **Who is liable to punishment under this section.**

(*a*) Under this section, the person who actually breaks the condit on of the license and no one else shall be punished. L.B.R. (1872-1892), p 373 (at p. 374). **I**

(*b*) It is not merely the licensee but any person who can be made liable under this section. U.B.R. (1897-1901), Vol. I (Cr.). p. 189 (at p. 191). **J**

(*c*) A person selling liquor under cover of and in contravention of a license cannot be allowed to set up the plea that the license was not to himself and thus evade the consequences of his act and the provisions of the Act. 19 W.R. 34 (Cr.). **K**

Note.—This is a case under Act XXI of 1856 in Bengal.

3.—"Or any condition of a license granted under this Act."

(1) **Liability of master and servant.**

The words "any person—granted under this Act" refer only to the actual licensee. A licensee deputing a servant to manage a retail liquor shop is responsible for the acts of the latter, done within the scope of his employment and is punishable for any breach of condition committed by him, even if he has expressly forbidden the servant to commit the same. The test of the master's liability in such cases is whether the servant's act was done in the course of management and within the scope of his authority. 1 N.L.R. 81=2 Cr. L.J. 959. **L & M**

(2) **Breach of any of the conditions of a license punishable.**

The breach of any of the conditions of a license by a license-holder is punishable. 1 A. 630 (p. 634). **N**

The following are some of the conditions of a license the breach of which is punishable under this section.

(3) **Subletting benefits of the license.**

Subletting the benefits of a license granted under this Act in contravention to an express prohibition against such subletting, contained in the license is a breach of one of the conditions of the license liable to be punised under this section. (1888) A.W.N. 215. **O**

(*a*) PRINCIPLE UNDERLYING SUCH CONDITION.

The view against subletting a license is based not only upon the general principle that anything which defeats statutory provisions or is against the public policy should not be allowed but upon especial matters of the Excise law that the capacity of the licensee is a matter to be taken into account and that the consideration of the public morals also forms part of the granting of such license with reference to the character of such license. 10 A. 577 (p. 580). **P**

3.—"Or any condition of a license granted under this Act"—(Continued).

The following are some of the conditions of a license the breach of which is punishable under this section.—(*Continued*).

(4) **Admitting into partnership.**

(*a*) DIFFERENT FROM SUBLETTING.

Subletting a license and admitting an unlicensed person into partnership of excise business are different in principle. 11 C.P.L.R. 62 (p. 63) (Civ). **Q**

(*b*) WHETHER IT IS LAWFUL.

The mere admission by a licensee of an unlicensed person to partnership would not necessarily be unlawful unless there are conditions in the agreement of partnership which would render it unlawful. (*Ibid.*) **R**

(*c*) CONTROL OF BUSINESS PARTIALLY TAKEN AWAY THEREBY—SUCH PARTNERSHIP ILLEGAL.

As an excise licensee enters into special obligations towards the Government, not only financial but also affecting the public morals and as public policy requires that the entire control of the business which he undertakes subject to those obligations should remain in his hands, any partnership entered into by him, which has the effect of taking away a part of the control of the business out of his hands will be illegal and void. (*Ibid.*) **S**

(5) **Not to sell liquor to soldiers in uniform.**

(*a*) Not to sell liquor to soldiers in uniform is one of the conditions under which a license is granted in Lower Burmah. L.B.R. (1872--1892) p. 373 (at p. 374). **T**

(*b*) THE CONDITION RUNS THUS:—

A licensee shall not knowingly *sell* or *dispose* of any liquor to any European soldier either *directly* or *indirectly* under cover of the license. U.B.R. (1897—1901), Vol. I. (Cr.) p. 178 (p. 179 and also p. 184). **U**

(*c*) MEANING OF THE TERM "DISPOSE OF."

In the above condition (which obviously deals with sale) the expression "dispose of" refers and was intended to refer to a disposition of the nature of a sale and does not indicate any wider meaning and cannot be made to apply to gifts or other transfers not of the nature of a sale. U.B.R. (1897—1901), Vol. I (Cr.) p. 178 (p. 181). **V**

(*d*) NOT EVEN TO SELL INDIRECTLY.

A person cannot try to escape the provisions of this condition by selling liquor to soldiers indirectly. U.B.R. (1897—1901), Vol. I, p. 178 (at p. 179) (Cr.). **W**

(*e*) WHETHER THIS CONDITION OVERRIDES ARTICLES 542 AND 543 OF THE ARMY REGULATIONS.

This condition of the license which is inserted not with a view to any benefit to the excise but solely in the interests of the army and with the object of preventing the unauthorized sale of liquor to soldiers is not intended to override the provisions of the Army Regulations (Articles 542 and 543, Vol. X, India) and to deprive soldiers of the privileges under their own regulations. U.B.R. (1902—1903), Vol. I, (Cr.), Excise p. 1. **X**

*3.—"Or any condition of a license granted under this Act"—(Concluded).

The following are some of the conditions of a license the breach of which is punishable under this section.—(*Concluded*).

NOTE.—(i) Art. 542 of Army Regulations, India, Vol. X provides that when troops are travelling under the command of an officer, his sanction must be obtained before the soldiers can be supplied with liquor from railway refreshment rooms.

(ii) And Article 543 provides that soldiers travelling alone in small parties, not under the command of an officer, will on application to second class railway refreshment rooms, and provided the men are in uniform and are sober be supplied on payment with certain refreshments including one pint of beer for each man. (See Army Regulations, India, Volume X).

(6) **Keeping open to the bar after midnight.**

It is a breach of a condition of the license granted under the Excise Act to keep open the bar, a place for selling fermented liquor in retail, after the hour of midnight. U.B.R. (1897—1901), Vol. I, p. 178 (Cr.) and U.B.R. (1892—96), Vol. I, p. 100. **Y**

(7) **Selling liquor to a Burman.**

Selling liquor to a Burman is a breach of the conditions of license as no licenses for the sale of spirits to Burmans are granted in Upper Burmah. U.B.R. (1897—1901), Vol. I, (Cr.), p. 187. **Z**

N.B.—Selling spirituous liquor to a Burman is not merely a breach of condition but an "illicit sale" and is more severely punishable under S. 49 of the Act. (See S. 49, *supra*). **A**

SELLING LIQUOR TO BURMAN WHO BUYS IT FOR HIS MASTER A NON-BURMAN.

Although a licensee no doubt runs considerable risk in letting a Burman have liquor, he cannot be convicted for illicit sale of spirit under S. 49 or under S. 52, if it is clearly established that the Burman to whom liquor was sold is the agent of a disclosed principal and that the liquor was sold to the Principal and not to the agent who merely took delivery of the liquor sold to his master. U.B.R. (1897-1901), Vol. I, p. 187 (at p. 188). **B**

(8) **Fee not paid in advance—Punishable as a breach of the conditions of license.**

Any negligence on the part of the holder of a license and his not paying the monthly fee in advance, due under the license are breaches of the conditions under which a license is usually granted, and so they are punishable under this section. 1 A. 638 (p. 642). **C**

(9) **Selling liquor to European soldiers—Army Regulations—Whether a breach of condition.**

Although it is a condition of the license that the licensee shall not knowingly sell or dispose of malt liquor spirit or fermented liquor to any European soldier either directly or indirectly under cover of the license (*vide* Form VIII under the Excise Rules of Burmah), a person selling liquor to European soldiers in accordance with the provisions of the Army Regulations cannot be convicted under the Act. U.B.R. (1902—1903), Vol. I (Cr.) Excise, p. 1. **D**

4.—"*Shall be punished.*"

(1) **Breach of condition by servant without master's knowledge.**

(*a*) MASTER NOT LIABLE.

The proper construction of section 42 is that the person who *actually* breaks any condition of a license shall be punished and no one else. Therefore a licensed vendor of liquor whose servant commits a breach of any of the conditions of the license without his master's knowledge cannot be held liable under S. 52 for the act of his servant. L.B.R. (1872—1892), p. 373; U.B.R. (1892-96), Vol. I, p. 109. E

N.B.—If the master is to be responsible for the act of the servant, complicity must be proved. (*Ibid.*) at p. 375.

And at p. 397 *Mac Even, J.*, says :—In order to convict the master it is necessary that there should be evidence to show that the master caused the act to be done by the instrumentality of his servant. (*Ibid.*) F

Semble:—(*Dubitante*) If in the above case the licensee may not employ a servant to conduct his business or if he is bound always to be in the shop, who should then be held liable? U.B.R. (1892—96), Vol. I, p. 109 (110). G

(*b*) SERVANT NOT LIABLE UNDER S. 59.

In the above case, the servant who had actually committed the offence cannot be found guilty of abetting his own act and a conviction under S. 59 would be bad. L.B.R. (1872-92), p. 373 (p. 374). H

(*c*) BUT LIABLE UNDER S. 52.

As it was the servant who actually broke the condition of the license he can be held liable for his act and may be convicted of a breach of the condition of a license under this section. L.B.R. (1872-1892), p. 373 (at p. 375-377). I

(2) **Confinement in Civil Jail.**

Every person imprisoned for an offence under S. 47 or S. 52 shall be confined in the Civil jail. (*Vide* S. 18, *infra*). J

5.—"*With fine which may extend to fifty rupees.*"

(1) **Fine not imprisonment.**

The offence of a breach of section 52, Act XII of 1896, is only punishable with fine and not with imprisonment, although payment of the fine may by S. 64 of the Penal Code be enforced by means of imprisonment which if necessary shall be in the Civil Jail. L.B.R. (1872-1892) p. 373 (at p. 375). K

(2) **Proceeding under S. 52 is a criminal one.**

A prosecution under section 52 of the Excise Act is clearly a criminal proceeding. L.B.R. (1872-1892) p. 373 (377). L

For conniving at illicit manufacture or sale of spirit, etc.

53. (1) Any owner or occupier of land, and any agent of any such owner or occupier, who authorizes or connives at the illegal manufacture of spirit or the sale of spirit or fermented liquor or intoxicating drugs shall, for every such offence, be punished with imprisonment for a term which may extend to four months, or with fine which may extend to one thousand rupees, or with both.

(2) Any person invested with local jurisdiction who authorizes or connives at the illegal sale of any spirit, fermented liquor, or intoxicating drug within the local limits of such jurisdiction shall be punished with fine which may extend to five hundred rupees.

For Police neglecting to aid Excise-officers.

54. Any Police-officer who, without lawful excuse, neglects or refuses to aid an Excise-officer as required by section 43, and any officer in charge of a police-station who, on application made by an Excise-officer desiring to act under section 38, fails to attend a search himself, or to depute a subordinate officer of the required rank, shall be punished with fine which may extend to five hundred rupees.

For vexatious search or seizure.

55. Any Excise-officer who,—

(*a*) without reasonable grounds of suspicion searches, or causes to be searched, any place, or

(*b*) vexatiously and unnecessarily seizes the moveable property of any person on the pretence of seizing or searching for any article liable to confiscation under this Act, or

(*c*) vexatiously and unnecessarily arrests any person, or

(*d*) commits any other excess not required for the execution of his duty,

shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

For delay in reporting arrest, etc., or in taking person arrested to Magistrate.

56. Any Excise-officer who, in contravention of section 41 or section 42, neglects to report the particulars of an arrest, seizure or search, or delays taking to the Magistrate or Collector, as the case may be, any person arrested or any article seized under this Act, shall be punished with fine which may extend to two hundred rupees.

Prosecutions restricted.

57. A Court shall not take cognizance of an offence punishable under any one of the following sections, namely, 45, 46, 47, 48, 49, 51, 52, and 53, except on the complaint or report of the Collector or an Excise-officer [1]; and a Court shall not take cognizance of any offence punishable under this Act unless the prosecution is instituted before the expiry of six months next after the commission of such offence.

(Notes).

I.—" Except on the complaint or report of the Collector or an Excise-officer."

(1) **Section peremptory –Proceedings not in accordance with, void.**

The language of this section being stringent, a Court has no jurisdiction without such report or complaint. Hence any proceedings in contravention of the provisions of this section are void, as such a defect goes to the root of the case. U.B.R. (1892—96), Vol. I, p. 111. (*Cf.* U.B.R. 1897—1898, Excise p. 13). **M**

(2) **Police officers invested with powers of an Excise-officer whether authorized to make complaint.**

(*a*) A Police-officer, invested by the local Government with some of the powers given by S. 44 of this Act, is not a person competent or authorized to make a complaint or report of the commission of any offence under Ss. 45, 46, 47, 48, 49, 51, 52 and 53. (1896) A.W.N. 105. **N**

N.B.—But this ruling has been overruled by (1897) A.W.N. 162 for which see below.

(*b*) An officer of Police invested with powers under Ss. 27, 28 and 29 of Act XXII of 1881, who had power in certain events to take the case before a Magistrate under S. 32 of the said act is an Excise-officer within the meaning of S. 47 of that Act. 20 A. 70 = A.W.N. (1897) 162. **O**

N.B.—But it is not necessary that such police-officer should be authorized as an Excise-officer under S. 35 of Act XII of 1896. (*Ibid.*) **P**

(*c*) A Head Constable is an Excise-officer within the meaning of S. 57. It is erroneous to hold that the term "Excise-officer" in this section means only an Excise Inspector or where there is no such officer in the District the Collector or Assistant Collector in charge of excise, as such a view overlooks the provisions of S. 44, *supra*. 30 A. 377 = 5 A.L.J. 444 = 8 Cr. L.J. 5 = A.W.N. (1908) 157. **Q**

(*d*) An Assistant Superintendent of Police who is invested with the powers of an Excise-officer (*vide* Finance and Commerce Department Notification No. 84, dated 16th October 1888) is an Excise-officer within the meaning of this section, on whose report prosecutions under this Act can be instituted at least in cases in which he has arrested or caused the arrest of the accused. U.B.R. (1897—1901) Vol. I, p. 182 (Cr.). **R**

(3) **Taking cognisance of an offence on a Police chalan—No complaint or report by Collector or Excise-officer.**

A Magistrate can take cognisance of an offence of working an illicit still on the report or chalan of a Deputy Inspector of Police, who is invested with powers of an Excise-officer. Reid and Harris, JJ. 8 P.R. 1901 (Cr.); (following 22 P.R. 1900 (Cr); 15 P.R. 1887; 4 P.R. (1893); (9 P.R. 1897, *D.*). **S**

(4) **Excise-officer who has himself taken proceedings, not competent to try.**

An Excise-officer who had himself taken proceedings against a person accused of an offence under the Excise Act is incompetent to try such person in respect of the same matter. A.W.N. (1896) 105; [*contra* A.W.N. (1897) 162]. **T**

1.—"Except on the complaint or report of the Collector or an Excise-officer"—(Concluded).

(5) **Excise Collector not a Court.**

An Excise Collector is not a Court within the meaning of S. 195, cl. (*b*) of the Crim. Pro. Code. 10 C.W.N. 220=3 Cr.L.J. 196. **U**

(6) **Effect of illegal arrest on trial.**

There is no provision of law which invalidates proceedings before a Court because the accused has been arrested illegally or irregularly. Therefore a person cannot plead the illegality of the arrest in bar of trial and still less after trial can he obtain the reversal of the conviction on this ground. U.B.R. (1897—1901), Vol. I, p. 182 (183) (Cr.) and L.B.R. (Printed Judgments) 1897, p. 369. **V**

N.B.—People who are illegally arrested have their remedy in other ways. (*Ibid.*). **W**

(7) **Magistrate and Collector same person—Information of private individual.**

Under Act XXI of 1856, it was held that although any section of an Act prescribes that certain offences under the Act should be taken cognisance of by a Magistrate only on the report of the Collector or an Excise (or Akbari) officer, a Magistrate has jurisdiction to adjudge upon such matters even on the information of a private individual where the functions of Collector and Magistrate are discharged by the same official. 15 P.R. 1870 (Cr.). **X**

N.B.—In the same decision, it was also held that a sworn information is not necessary under the section. (*Ibid.*) **Y**

Confinement in what jail.

58. Every person imprisoned for an offence under section 47 or section 52 shall be confined in the civil jail, and every person imprisoned for an offence under any other section shall be confined in the criminal jail.

Attempts and abetment.

59. Whoever attempts to commit any offence punishable under this Act, or abets, within the meaning of the Indian Penal Code [1], the commission of any such offence, shall be punished with the punishment provided for such offence. XLV of 1860.

(Notes).

1.—"Or abets within the meaning of the Indian Penal Code."

(1) **Effect of this section.**

S. 59, so far as it relates to abetment supplants Ch. V of the Indian Penal Code. **Y 1**

(2) **Instigating illegal sale of liquor.**

(*a*) SUCH INSTIGATION PUNISHABLE.

Any person who instigates anybody to make an illegal sale of liquor is an abettor and liable to punishment under this section. L.B.R. (1872—1892), p. 146. **Z**

1.—"Or abets within the meaning of the Indian Penal Code"—(Concluded).

(*b*) INSTIGATOR PRESENT AT ILLEGAL SALE—PRINCIPAL OFFENDER.

By force of Ss. 40, 114 and 107 of the Indian Penal Code, if those who instigate the illegal sale of liquor are present at the time of such sale they will be deemed as principal offenders and hence liable to the punishment for which the person who illegally sold liquor will be liable. L.B.R. (1872—1892) p. 146 (148). **A**

(*c*) POLICE OFFICER—ABETTING WITH A VIEW TO CHARGE THE OFFENDER —PROCEDURE ILLEGAL—POLICE PUNISHABLE.

(i) A Police Officer who instigates any person to commit the offence of illegal sale of liquor and procures such sale with a view to bring such offender to justice will be held liable as an abettor and will be punishable as such. (*Ibid.*) **B**

(ii) It is unfair on the part of the prosecution to set a trap to instigate a person to commit an offence and then charge him with the offence as the prosecution should have no personal interest in a case. (*Ibid.*) **C**

(iii) The duty of the police is to prevent the commission of offences and not to conspire and instigate an offence whatever their view may be in doing so. For the latter procedure would defeat the obligation laid upon them by S. 23 of the Police Act V of 1861. (*Ibid.*) **D**

(3) Causing a licensed vendor to contravene his license—Abetment—Abettor guilty though principal has committed no offence.

The accused in this case purchased a bottle of liquor from a licensed vendor, for the use of a soldier, and handed it to the latter in contravention of the vendor's license. The vendor sold it in good faith not being aware of the intended use by the soldier: *Held* that under S. 108, I.P.C., read with explanation (iii) and illustration (*d*), the accused must be found guilty of abetment of breach of the vendor's license, though the vendor himself might, under the circumstances have committed no offence. 55 P.R. 1905 (Cr.)=201 P.L.R. 1905=3 Cr. L. J. 135. **E**

Disposal of fines, etc., as rewards.

60. Any Magistrate before whom any person is convicted of any offence under sections 45, 46, 47, 48, 49, 51 or 53, may award to any person who has contributed in any way to such conviction, the whole or any portion of any fine [1], imposed upon the offender and paid by him or realized from his property.

(Notes).

1.—"May award....the whole or any portion of any fine."

Informer—Award of a portion of fine—Legality.

It is legal to award to an informer who thus contributes in a way to the conviction of any offence under this Act, a portion of the fines imposed on the offender on a conviction for such an offence. 6 P.R. 1877 (Cr). **F**

Magistrate to pass order of confiscation.

61. Any article liable to confiscation under this Act may, on the application of an Excise-officer, be confiscated by the order of any Magistrate within the local limits of whose jurisdiction it is found.

CHAPTER VIII.

MILITARY CANTONMENTS.

Manufacture and sale of spirits, etc., in military cantonments.

62. Within the limits of any military cantonment, and within such distance from those limits as the Local Government in any case prescribes, no licenses for the manufacture of spirit, or for the sale of spirit or fermented liquor shall be granted, nor shall the fees leviable on licenses for the retail sale of such spirit or liquor, or the right to manufacture such spirit or liquor, be let in farm, unless with the knowledge and consent of the Commanding Officer [1]; and upon his requisition any such license which has been granted, either by the Collector or by a farmer, within such distance or limits, shall be immediately cancelled.

(Notes).

1.—"Unless with the knowledge....Commanding Officer."

Military Hospital—Sale to apothecary with the knowledge of Commanding officer —No offence.

The sale of spirituous liquor to an apothecary in a military hospital without the knowledge or consent of the commanding officer is not an offence. 23 P.R. 1870 (Cr). **G**

Application of Act to military cantonments.

63. In all other respects the provisions of this Act shall have effect within such limits or distance.

CHAPTER IX.

MISCELLANEOUS.

Collector subject to control of Commissioner.

64. (1) The Collector shall in all proceedings under this Act be subject to the control of the Commissioner of Revenue, and all orders passed by a Collector under this Act shall be appealable to such Commissioner in manner provided by the rules for the time being in force relating to appeals from the orders of Collectors.

(2) The Chief Revenue-authority may revise any order passed by a Collector under this Act or by a Commissioner under this section.

Additional power for Chief Revenue-authority to make rules.

65. The Chief Revenue-authority may, from time to time, make rules [1] consistent with this Act—

(*a*) as to the period for which any license or farm under this Act shall be granted;

(*b*) as to the fee payable for any such license or farm, and the time or times at which it shall be payable;

(*c*) as to the security to be given by any licensee or farmer under this Act;

(*d*) as to the form of any license or farming lease and of the counterpart thereof (if any) to be taken from such licensee or farmer, and the conditions which may be inserted therein;

(*e*) as to the disposal of things confiscated under this Act;

(*f*) as to the duties of Excise-officers; and

(*g*) to provide generally for carrying out the provisions of this Act. [2]

(Notes).

1.—" The Chief Revenue-authority may.... make rules."

General rules so made.

For general rules thus made under the provisions of this section of the Act, vide Notification No. 8 Burmah Gazette 1897 Part IV, p. 175. **H**

2.—" To provide generally.... Act."

Financial Commissioner has such power.

This sub-section empowers the Financial Commissioner to make rules consistent with the Act to provide generally for the carrying out of the provisions of the Act. L.B.R. (1893—1900), p. 336. **I**

Power for Local Government to exempt articles and persons.

66. The Local Government may, from time to time, by notification in the official Gazette, exempt within any specified local area any specified articles or any specified class of persons from all or any of the provisions of this Act, and may, by like notification, cancel any such exemption.

THE SCHEDULE.

(*See Section 2*).

Year.	No.	Title or subject.	Extent of repeal.
1881	XXII	The Excise Act, 1881 ...	The whole.
1885	VI	Amending the Excise Act, 1881...	Ditto.
,,	IX	Amending the Excise Act, 1881, and other Acts ...	So much as relates to the Excise Act, 1881.
1887	II	Ditto ...	Ditto.
1888	XVIII	Financial Commissioner, Burma ...	So much of S. 7 and the Schedule as relates to the Excise Act, 1881.
1889	XIII	The Cantonments Act, 1889 ...	So much of S. 2 and the Schedule as relates to the Excise Act, 1881.
1890	XIII	Amending the Excise Act, 1881, and other Acts ...	Sections 2 to 5 (both inclusive).
,,	XX	The North-Western Provinces & Oudh Act, 1890 ...	S. 43.
1891	XII	The Repealing and Amending Act, 1891 ...	So much as relates to the Excise Act, 1881.
1893	X	Amending the Excise Act, 1881 ...	The whole.

THE EXCISE ACT, 1896.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this volume and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S in Brevier Roman denotes the section.

A

Abetment, Penalty for attempts and S. 59, **57**, **58**.

Causing licensed vendor to contravene his license—Abettor guilty though principal has committed no offence, *E*, **58**.

Accomplice, Conviction on the uncorroborated evidence of an, bad, *F*, *G*, **47**.

Act, In an, intended only for protection of revenue, object of penalty, *E*, **39**.

Act XVI of 1863, Saving of, S. 4, **14**.

Act XIII of 1889, Saving of, S. 4, **14**.

Agreement, for sale of fermented liquor ; when void, *X*, **25**.

Appeal, Summary procedure, No. I, **7**.

Arrest, Generally unnecessary, *O*, **34**.

Rescuing person so arrested—punishable under Penal Code, *P*, **32**.

Power to, co-extensive with power to send persons to a Magistrate, *X*, **37**.

Effect of illegal, on trial, *V*, *W*, **57**.

Attachment, Property liable to confiscation, devolving on accused may be attached, *O*, **40**.

Attempts, Penalty for, and abetment, S. 59, **57**, **58**.

B

Beer, from Mandalay Brewrey when regarded as farmented liquor, *X*, *Y*, **30**.

Board of Revenue, Definition in Court Fees Act, *S*, **11**.

Burden of proof, Burden of proving spirits to be foreign, *Z*, *A*, **30**, **31**.

possession of illegal quantities of foreign fermented liquor—Plea of "private use" *D—T*, **31**, **32**.

Burman, Possession of liquor by, whether an offence, *V*, **45**.

C

Chandu, no intoxicating drug, *H*, **13**.

Preparation of, *F*, **19**.

Preparation of, not punishable, *Z*, *A*, **42**.

"*Chief Revenue authority*," defined, S. 3, **1—14**.

Additional power for, to make rules, S. 65, **60**.

Civil jail, Offenders under Ss. 47 or 52 to be confined in, *J*, **54**.

"*Collector*," defined, S. 3, **10** **14**.

Definition insother Acts, *T*, **11**.

"*Collector*"—(Concluded).

Sub-collectors and Head Assistant collectors vested with power of, position of, *U*, *V*, **11**.

Recovery of arrears of fees, S. 34, **33**.

may issue warrant of arrest in certain cases S. 39, **36**.

may issue search warrant, S. 40, **36**, **37**.

May appoint excise officers, S. 33, **51**.

Subject to control of Commissioner, S. 64, **59**.

Commissioner, Collector subject to control of, S. 64, **59**.

"*Commissioner of Revenue*," defined, S. 3, **10—14**.

Definition in General Clauses Act, *W*, **12**.

Compensation, to farmers in certain cases, S. 27, **27**.

Confinement, in what jail, S. 58.

Construction (*of statutes*), Of Penal statutes, *M*, **9**.

Conviction, for illegal sale and possession of same liquor bad, *P*, **40**.

Illicit working of still and illegal possession of spirit—Separate sentences convictions and *Q*, *R*, **40**.

Guilty knowledge necessary for, under S. 49, *E*, **46**.

on the uncorroborated evidence of an accomplice bad, *F*, *G*, **47**.

Country spirit, Power to establish distilleries for, S. 6, **16**.

Cr. P. C. 1898, S. 414—Addition or order of confiscation—Applicability, *T*, **41**.

Custody, of excisable articles on behalf of legal owner, whether illegal, *L*, **48**.

D

Distilleries, Power to establish, for country spirit, S. 6, **16**.

Distillery liquor, when regarded as foreign liquor, *U*, **30**.

Presumption, *B*, **31**.

District Magistrate, Powers of, exercised by Superintendent or Assistant Superintendent, *Y*, *Z*, *A*, **12**.

Drunkenness, Punishment for permitting, etc., in shop, S. 50, **47**.

for illegally possessing spirit or liquor, S. 51, **47**, **48**.

Duty, On spirit, S. 7, **16**, **17**.

On fermented liquor, S. 8, **17**.

On cultivation of hemp and intoxicating drugs, S. **13**, **19**.

Spirit and fermented liquor from foreign territory subject to, S. 31, **32**, **33**.

Spirit and fermented liquor from territory not in India subject to, S. 32, **33**.

E

Excise, meaning of, *G*, *H*, **8**.

Excise Act, Title, local extent and commencement, S. 1, **7**.

Its object, *A*, **7**.

Principle underlying such object, *B—V*, **7**, **8**.

Extension of Act to, Upper Burma (except Shan States), *I*, **8**. Lashio, *J—N*, **8**, **9**.

———S in force before passing of this Act, *R*, **9**.

Application of, to Military Cantonments, S. 63, **59**.

Excise Collector, is not a Court, *U*, **57**.

Excise offences, Trial of, *J*, **7**.

Excise Officer, Power for local Government to invest police officer with powers of, S. 42, and *Z*, *A*, *B*, **26**.

Power of, to inspect shops, S. 35, **34**. Power of, to arrest person carrying spirit etc., liable to confiscation, S. 36, **34**.

S. 36, what it deals with, *M*, **34**.

Power of, to search on information of illicit manufacture or possession, S. 38, **35**, **36**. Object of provision in S. 38, *R*, **138**.

Distinction between Ss. 37, 36, *S*, **36**.

Search by, not in presence of the Police—Arrest—Legality, *T*, **36**.

to report arrest, etc., and to take person arrested to Magistrate, S. 41, **37**.

What is contemplated by S. 41, *V*, **37**.

under S. 41, same as one under S. 47, *W*, **37**.

Jurisdiction—Personally interested, *Y*, **37**.

Police to aid, S. 43, **38**.

Police Officers invested with powers of an, whether authorised to make complaint, *N*—*R*, **56**.

who has himself taken proceedings, not competent to try, *T*, **56**.

Power of, to arrest persons in possession of article liable to confiscation, and to seize article, S. 37, **34**.

Penalty for police neglecting to aid, S. 54, **55**.

F

Farm, may be cancelled, S. 26, **27**. Power for collector to, fees and for farmer to grant, S. 25, **27**.

Farmers, Compensation to, in certain cases, S. 27, **27**.

Recovery of arrears by, S. 28, **27**.

S. 28 confined to arrears of fees only, *J*, **28**.

S. 28 does not extend to recovery of compensation, *G*, **28**.

Fermented liquor, See SALE.

defined, S. 3, **10—14**.

Kazawye no, *B*, *C*, **12**.

Production of, Ch. II, **15—18**.

Duty on, S. 8, **17**.

Possession and import of, Ch. V, **28—33**.

Fine, Offence of breach of S. 52 of the Act only punishable with, and not with imprisonment, *K*, **54**.

Disposal of etc., as reward, S. 60, **58**.

Financial Commissioner, empowered to make rules consistent with Excise Act, *I*, **60**.

Foreign fermented liquor, Possession of less than 12 quart bottles by Burman—No offence, *T*, **49**.

Foreign spirit, includes "distillery spirit," *Q*, **14**.

H

"*Hemp*" defined, S. 3, **10—14**.

No intoxicating drug, *L*, *M*, **13**.

Possession of any preparations of, whether punishable, *U*, **49**.

Possession of, no offence, *W*, **49**.

I

Informer, Award of a portion of—Legality, *F*, **58**.

Imprisonment, No offence under Excise Act, punishable with more than 6 months, *M*, **40**.

in default of fine illegal, *N*, **40**.

Award of, in default of payment of fine, *C*, **50**.

"*Import*" defined, S. 3, **10—14**.

"*Intoxicating drugs*" defined, S. 3, **10—14**.

What drugs are, *G*, **13**.

"Chandu," no, *H*, **13**.

Whether port is an, *I*, *J*, **13**.

Yeast balls are not, *K*, **13**.

Hemp no, *L*, *M*, **13**.

Cultivation and control of Ch. III, **18—22**.

Prohibition, restriction, and regulations of cultivation of hemp and production of S. 12, **18—19**.

Duty on cultivation of hemp and, S. 13, **19**.

Establishment and licensing of bond and other warehouses and levy of duty on, on issue therefrom, S. 14, **19—20**.

Payment of warehouse dues, S. 15, **20**.

Period during which, may remain in warehouses, S. 16, **20—21**.

Power to remove, from one warehouse to another, S. 17, **21**.

Possession of, S. 18, **21**.

Power of collector or other authorized officer to grant licenses and passes for the possession or transport of and for Chief Revenue authority to make rules, S. 20, **22**.

See SALE.

Instigation, Instigating illegal sale of liquor, *Z*, *A—D*, **57—58**.

J

Joint possession, by several persons of more spirit of liquor whether an offence, *Z*, **49**.

K

Kazawye, no "fermented liquor," *B*, *C*, **12**.

Possession of, no offence, *Y*, **49**.

L

License, License submitting his, illegal, *W—Y*, **15**.

Money due from such sub-lease not recoverable, *Z*, **15**.

Transfer of, illegal, *A*, **15**.

Reasons for the prohibition against sub-leasing or transferring a, *B*, **16**.

how granted and cancelled, S. 22, **24—26**.

Rules under S. 22, *R*, **24**.

Power given to Collector by S. 22, *R*, **25**.

Such license to be in accordance with the Rules of Chief Revenue authority, *S*, **25**.

is a personal privilege, *T*, **25**.

not heritable, *U*, **25**.

License—(Concluded).

Transfer of, *V*, *W*, **25.**

Granting of—Usual period for which it is granted, *V*, *Z*, **25.**

Fees to be paid in advance, *A*, **26.**

No intention to cancel—not recalled—subsists, *B*, **26.**

Further power to cancel, S. 23, **26.**

Collector when enpowered to cancel, *D*, *E*, **26.**

Surrender of retail, S. 24, **26—27.**

Power for collector to farm fees, and for farmer to grant S. 25, **27.**

Little neglect or delay in taking out, not punishable, *X*, **45.**

Refusal to produce, punishable, *G*, **51.**

Only licensee punishable, *H*, **51.**

Breach of any of the conditions of a, punishable, *N*, **51.**

Some of the conditions of a, the breach of which is punishable under S. 52, *O—Z*, *A—D*, **51—53.**

Sub-letting benefits of, *O*, *P*, **51.**

Admitting into partnership, an unlicensed person, effect of, *Q—S*, **52.**

Not to sell liquor, to soldiers in uniform. one of the conditions in—Effect, *T—W*, **52—53.**

Fee not paid in advance, punishable as breach of condition of, *C*, **53.**

Selling liquor to European soldiers—Army Regulations—Whether a breach of condition, *D*, **53.**

Keeping open to the bar after midnight, breach of condition of, *Y*, **53.**

Selling liquor to Burman, whether breach of condition of, *Z*, *A*, *B*, **53.**

Breach of condition of without master's knowledge, *E—I*, **54.**

Licensee, Sub-letting his license illegal, *W—Y*, **15.**

Liquor, Possession of, by Burman, whether an offence, *V*, **45.**

Punishment for illegally possessing spirit or, S. 11, **47—48.**

Possession as agent not punishable, *K*, **48.**

Possession of, during transit, *M*, *N*. **48.**

Possession of, by Burman, *O*, **48.**

Local Government, Power for, to exempt articles and persons, S. 66, **60.**

M

"*Magistrate*" defined, S. 3, **10—14.**

and Collector same person—Information of private individual, *X*, *Y*, **57.**

to pass order of confiscation, S 61, **59.**

"*Majum*" Possession of, no offence, *X*, **49.**

Master and servant, Liability of, *M*, **51.**

Manufacture, Natural fermentation is no, *V*, **15.**

Of spirit and liquor without license prohibited, S. 5, **15—16.**

Penalty for conniving at illicit, or sale of spirit, etc., S. 53, **54—55.**

See TARI.

Manufacturing, Hastening fermentation artificially not, *K*, **40.**

Necessary point to be proved for conviction under S. 45, *L*, **40.**

Military Hospital, Sale to apothecary of spirituous liquor with knowledge of commanding officer, no offence, *G*, **59**.

Military Cantonments, Manufacture and sale of spirits etc., in S. 62, **59**.

Application of Excise Act to, 63, **59**.

O

Offence, First—Punishment not to be severe—Fine sufficient, *H*, **47**.

P

Penalties, for illegally manufacturing spirit or liquor, S. 45, **37—40**.

for illegally manufacturing spirit or liquor, S. 45, **38- 41**.

Two objects of, *D*, **39**.

for illegally removing spirit or fermented liquor, S. 46, **41—42**.

for illegal introducing country spirit, S. 46, **41—42**.

for importing spirit, fermented liquor intoxicating drug without paying duty, S. 46, **41—42**.

for contravening rules prescribed by Chief Revenue authorities, S. 47, **42**.

for illegally cultivating hemp or collecting spontaneous growing hemp or preparing, possessing, importing exporting, or transporting intoxicating drugs, S. 48, **42**.

for permetting drunkenness etc., in shop, S. 50, **47**.

for refusing to produce license, and for breach of rules and conditions, S. 52, **50—54**.

Scope of S. 52, *E*, **50**.

Object of S. 52, *F*, **50**.

for conniving at illicit manufacture or sale of spirit, etc., S. 53, **54**, **55**.

for police neglecting to aid Excise Officers S. 54, **55**.

for vexatious search or seizure, S. 55, **55**.

for delay in reporting arrest etc., or in taking person arrested to Magistrate, S. 56, **55**.

for attempts and abetment, S. 59, **57—58** ; Effect of S 59, **59**.

"*Place*" defined, S. 3, **10—14**.

Police to aid Excise Officer, S. 43, **38**.

Police Chalan, Taking cognisance of—No complaint on report by Collector or Excise-Officer, S. 56.

Police Officers invested with powers of an Excise Officer, whether authorised to make a complaint, *N—R*, **56**.

Port, Whether, is an intoxicating drug, *I*, *J*, **13**.

Possession, of liquor to be punishable under S. 51, must be, with knowledge, *Q*, **48**.

of father and son—Presumption, *P*, **48**.

Transferee of licensee in good faith, in, of excise articles, liable to be punished though not severally, *A*, **50**.

Illegal, of unauthorised quantities of drugs imported from foreign territory no offence under S. 51, *B*, **50**.

Procedure, after arrest or seizure, S. 42, **37**.

Prosecution, under S. 52, a criminal one, *L*, **54**.
—s restricted, S. 57, **55—57**.
S. 57, peremptory—Proceeding not in accordance with void, *M*, **56**.
Punishment, under S. 49, to be in proportion with the degree of offence, *D*, **46**.
Who is liable to, under S. 52, *I—L*, **51**.

R

Regulation VI of 1819, Prohibition under Excise Act different from that under, *C*, **16**.
Repeal, as to, See S. 2, *P*, **9**.
Rules, Power for Chief Revenue authority to make, for distilleries and brewerier licensed under S. 5, S. 9, **17**.
Power for Chief Revenue authority to make, for distilleries established under S. 6, S. 10, **18**.
Sanction to, under Ss. 9 and 10, S. 11, **18**.
Power for Local Government to make, S. 19, **21**.
Additional power for Chief Revenue authority to make, S. 65, **60**.
Of spirit, fermented liquor, and intoxicating drugs, Ch. IV, **22, 28**.
Spirit, fermented liquor, and intoxicating drugs not to be sold without license, S. 21, **22—24**.
Scope of S. 21, *G*, **23**.
Selling tari not ferment, *H*, **23**; by servant of a license-holder not punishable, *I*, **23**.
Selling under an agreement from a license, *J—L*, **23**.
should be in accordance with the term of a license, *M*, **23**.
Selling liquors to soldiers not knowing, but in ignorance, *N*, **23**.
Of liquor to a solider in ignorance—Soldier whether punishable for abetting, *O*, **24**.
Of land for recovery of arrears of fees, *K*, **33**.
such sale to be subject to prior incumbrance, *L*, **33**.
by servant of license-holders whether punishable, *B*, **43**.
by servant of licensee's agent or manager, *C*, **43**.
Master liable for act of servant, *D—F*, **43**.
Heir of licensed vendor—by him after licensee's death—Legality thereof, *G*, **43**.
Without license—License taken or renewed sometime after, dating back to the former period, not punishable, *H—M*, **43, 44**.
Selling spirituous liquor in a way not provided by license, *N*, **44**.
Evidence of, *A*, *B*, **46**.
Illicit, of liquor—Evidence of general complaint inadmissible, *C*, **46**.
Transaction not for profit is no, *Y*, **46**.
Instigating illegal, of liquor, *Z*. *A—D*, **57, 58**.

S

"*Ser*" defined, S. 3, **10—14**.
Explanation, *N*, **13**.
applied as a measure of capacity, *O*, **13**.
Customary weight of—95 tolas, *P*, **13, 14**.
Having more than one, of liquor in possession punishable, *J*, **29**.
Customary weight of—95 tolas—unlicensed vendor—Selling by retail—Possession of weight of 96 tolas not punishable, *L,M*, **29**; Licensed person allowed to possess more than one, *S*, **30**.

Seye, declared to be fermented liquor, *E*, **12.**

"*Shamshu*" whether foreign or country spirit, *R*, **14.**

A foreign spirit, *V*, **30.**

Slight illegality not punishable, *U*, **46.**

"*Spirit*" defined, S. 3, **10—14.**

Medicine containing alcohol not necessarily, *F*, **13.**

Guiding Rule to find whether, is country or foreign, *S—U*, **14.**

Manufacture of, and liquor without license prohibited, S. 5, **15, 16,**

Production of Ch. II, **15—18.**

Duty on S. 7, **16, 17.**

Possession of, etc., S. 30, **28, 32.**

Knowledge of legal possession of more than specified quantity necessary for conviction under S. 30, *N—R*, **29, 30**

Quantity and possession of which is legal, *H, I*, **28, 29.**

Possession and import of Ch. V, **28—33.**

mixed with *lahan* whether country or foreign, *W*, **30.**

Purchase of foreign, for private use—no offence, *C*, **31.**

and fermented liquor, from foreign territory subject to duty, S. 21, **32, 33.**

Distilling and possessing not distinct offences—Double sentence illegal, *S*, **40.**

Introduction of foreign illegal, *U, V*, **41.**

for illicitly selling, etc., S. 49, **43.**

See SALE.

Summary procedure, No appeal, *I*, **47.**

T

Tapping, one's own toddy tree, no offence, *F*, **39.**

Tari, Power for Chief Revenue authority to regulate supply of, to licensed vendors, S. 29, **28.**

Tapping, whether manufacture, *G*, **39.**

Leaving sweet, to ferment not manufacturing, *H*, **39.**

Whether offence of manufacture of, possible, *I, J*, **39.**

Sale of, not fermented not punishable, *Z*, **46.**

tapped from one's own toddy tree—Possession of more than the legal quantity, punishable, *S*, **49.**

"*Tax*,' defined, S. 3, **10, 14.**

Toddy, Collection of, in pots on a tree constitutes possession, *R*, **48.**

"*Tola*," defined, S. 3, **10, 14.**

Transaction not profit, is no sale, *Y*, **46.**

V

Vessel or conveyance, Meaning of, *D*, **50.**

Y

Yeast balls, are not intoxicating drugs, *K*, **13.**

Possession of, no offence, *V*, **49.**

Younger's Monk Brand Beer, coming under fermented liquor, *T*, **30.**

THE LAWYER'S COMPANION SERIES.

THE POLICE ACT, 1861

(ACT V OF 1861)

(WITH THE CASE-LAW THEREON)

BY

T. V. SANJIVA ROW,

FIRST GRADE PLEADER, TRICHINOPOLY.

(AUTHOR OF A "DIGEST OF PRIVY COUNCIL RULINGS,"
THE "CURRENT INDEX OF INDIAN CASES,"
THE "LAWYER'S REFERENCE,"
AND
THE "INDIAN EVIDENCE ACT.")

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THE POLICE ACT, 1861.

TABLE OF CASES NOTED IN THIS ACT.

			PAGE
		I.L.R. Allahabad Series.	
6 A 495	...	Queen-Empress v. Salig Ram ...	29
10 A 459	...	——— v. Durga ...	12, 27
20 A 151 (154)	...	——— v. Muhammad Ismail Khan ...	28, 42
22 A 340	..	——— v. Naram Singh ...	30
26 A 220 (222)	...	Muhummad Saddiq Ahmad v. Panna Lal ...	41
27 A 292	...	Emperor v Shib Singh ...	8
		I.L.R. Calcutta Series.	
6 C 625	...	Janokinath Gupta, *In re* ...	29
12 C 427	...	Bhola Nath Das, *In re* ...	26, 28, 29
15 C 194	...	Queen-Empress v Abdul Hossein ...	13, 29
27 C 452	..	Ramasory Lall v Queen-Empress ...	8
27 C 655	...	Khan Baputi Dewan v. Bispati Pundit ...	36, 37
28 C 411	...	Raman Singh v. Queen-Empress ...	22
32 C 180	...	Emperor v. Sarada Prosad Chatterjee ...	8
35 C 454	...	Nanda Kishore Singh v. Emperor ...	19
		I.L.R. Madras Series.	
29 M 192	...	Emperor v. Ramasawmy Raju ...	29
		The Allahabad Law Journal.	
1 A L J 597	...	Shib Singh v. King-Emperor ...	8
4 A L J 44	...	Emperor v Madho Ram ...	37, 38
		The Allahabad Weekly Notes.	
A W N 1881, 61	...	Empress v. Murli ...	38
A W N 1883, 42	...	——— v. Muhammad Husain ...	27, 28
A W N 1887, 67		——— v. Rai Bishen Chand ...	37
A W N 1888, 169	...	——— v Durga ...	12
A W N 1890, 167	..	——— v. Ram Khilawan ...	8
A W N 1895, 152	...	Queen-Empress v. Baldeo Prasad ...	8
A W N 1904, 231	...	Shib Singh v. King-Emperor ...	8
A W N 1906, 317	...	Emperor v. Madho Ram ...	37, 38
		The Calcutta Law Journal.	
2 C L J 555	...	Gopinath Paryah v. Empress ...	20
2 C L J 616	...	Ram Gopal Ghosh v. King-Emperor ...	10
3 C L J 475	...	Upendra Kumar Ghose v. The King-Emperor ...	10, 11
8 C L J 66	...	Radha Kanta Lall v. King-Emperor ...	19
8 C L J 69	...	Dasarathi Mahapatra v. Raghu Sahu ...	19
		Calcutta Weekly Notes.	
4 C W N 594	...	Ramasroy Lall v. The Empress ...	8
5 C W N 134	...	Nowrangi Singh v. Queen-Empress ...	22
10 C W N 82	...	Gopinath Paryah v. The Empress ...	20

		PAGE
	Calcutta Weekly Notes—(*Concluded*).	
10 C W N 322 (332)	Umes Chandra Gupta v. Emperor ...	19, 20, 21, 22, 26, 32
10 C W N 727 (729)	Upendra Kumar Ghose v. The Emperor ...	10, 11
12 C W N 366 ...	Nanda Kishore Singh v. Emperor ...	19
12 C W N 727 ...	Radha Kanta Lall v. King-Emperor ...	19
	The Bengal Law Reporter.	
8 B L R App. 58 ...	The Queen v. Dinonath Gangooly ...	12, 27
8 B L R App. 60 ...	Queen v. Radhu Singh ...	27, 28
10 B L R App. 4 ...	Rohoman Sircar, *In re* ...	19, 20, 21
	The Calcutta Law Reports.	
10 C L R 521 ...	Ram Kumar, *In re* ...	27
	Sutherland's Weekly Reporter.	
1 W R 5 (Cr) ...	Indrobeer Thaba, *In re* ...	27, 30
1 W R 15 (Cr) ...	Queen v. Rohim-Kant Ghose ...	13, 15
4 W R 2 (Cr) ...	Police officers of Pabna ...	6, 30
5 W R 22 (Cr) ...	Thakoor Das and Godai Shek, *In re* ...	32
8 W R 425 ...	Narain Deen Tewari v. Rajah Ram Das ...	41
9 W R 97 (Cr) ...	Chutter Lall Singh v. Baboo Otool Chunder Mookerji ...	24
14 W R 41 (Cr) ...	Pran Kisto Pal, *In re* ...	30
15 W R 17 (Cr) ...	Baroda Kant Mookhopadhya ...	27
17 W R 12 (Cr) ...	Queen v. Dinonath Gangooly ...	12, 27
17 W R 34 (Cr) ...	Radhoo Sing, *In re* ...	27, 28
18 W R 67 (Cr) ...	Rohoman Sircar, *In re* ...	19, 20
19 W R 7 (Cr) ...	The Queen v. Bolaki Lall ...	27, 28, 31
19 W R 36 (Cr) ...	———— v. Basooram Dass ...	30
21 W R 30 (Cr) ...	Syed Futteh Mahomed, *In re* ...	23, 24, 42
25 W R 20 (Cr) ...	The Queen v. Golam Arabee ...	31, 32
	Punjab Record.	
96 P R 1866 (Cr) ...	Autaur Singh v. Narayan Singh ...	31
2 P R 1868 (Cr) ...	Dooloo Mul v. Dewa Singh ...	31
38 P R 1870 (Cr) ...	Premsookh Das v. The Crown ...	41
11 P R 1874 (Cr) ...	The Crown v. Futteh Khan ...	31
28 P R 1885 (Cr) ...	Mukanda v. Empress ...	37
	Punjab Weekly Reporter.	
9 P W R (Cr) 1908.	Hamayun v. The King-Emperor ...	8, 38
	N.W.P.H.C. Reports.	
2 N W P H C R 5 .	The Queen v. Ameer ...	30
3 N W P H C R 128	The Queen v. Hearn ...	30, 32
7 N W P H C R 237	The Queen v. Hazar Mir Khan ...	26, 31, 40, 41
	Central Pro. Law Reports.	
5 C P L R 92 ...	Empress v. Puran ...	32, 34
6 C P L R 1 (Cr) ...	———— v. Kondu ...	32
	The Oudh Cases.	
6 O C 1 (8) ...	Mohkam Singh v. King-Emperor ...	3

			PAGE
	Lower Burma Rulings.		
L B R (1872-1892) p. 434	... Queen-Empress v. Nga Tha Dun U	...	37
1 L B R 101 (104)	... Crown v. Mi Zan	...	8
	Upper Burma Rulings.		
U B R (1897-1901) V. I, p. 363	... Queen-Empress v. Nga In	...	37
U B R (1897-1901) Vol. I, 365 (367)	... ——————— v. Nga O	...	40
U B R 1903 Vol. I Police p. 1	... Maung Po Kywin v. King-Emperor	...	25
Burma Selected Judgment (1872—1892) p. 150	... Queen-Empress v. Nga Shwe O	...	30
	Criminal Law Journal.		
3 Cr L J 420	... Upendra Kumar Ghose v. Emperor	...	10, 11
3 Cr L J 463	... Emperor v. Ramasawmy Raju	...	29
7 Cr L J 186	... Nanda Kishore Singh v. Emperor	...	19
7 Cr L J 291	... Hamayun v. Emperor	...	8, 38
7 Cr L J 507	... Radha Kanta Lall v. King-Emperor	...	19

THE POLICE ACT, 1861.

(ACT V OF 1861.)

As Modified up to the 7th March, 1903.

CONTENTS.

PREAMBLE.

SECTIONS.

1. Interpretation-clause.
2. Constitution of the force.
3. Superintendence in the Local Government.
4. Inspector-General of Police, etc.
5. Powers of Inspector-General.
   Exercise of Powers.
6. [*Repealed.*]
7. Appointment, dismissal, etc., of inferior officers.
8. Certificates to police-officers.
   Surrender of certificate.
9. Police-officers not to resign without leave or two months' notice.
10. Police-officers not to engage in other employment.
11. [*Repealed.*]
12. Power of Inspector-General to make rules.
13. Additional police-officers employed at cost of individuals.
14. Appointment of additional force in the neighbourhood of railway and other works.
15. Quartering of additional police in disturbed or dangerous districts.

15-A. Awarding compensation to sufferers from misconduct of inhabitants or persons interested in land.

16. Recovery of moneys payable under sections 13, 14, 15 and 15-A, and disposal of same when recovered.
17. Special police-officers.
18. Powers of special police-officers.
19. Refusal to serve as special police-officers.
20. Authority to be exercised by police-officers.
21. Village police-officers.
    Police-chaukidars in the Presidency of Fort William.
22. Police-officers always on duty and may be employed in any part of district.
23. Duties of police-officers.
24. Police-officers may lay information, etc.

SECTIONS.

25. Police-officers to take charge of unclaimed property, and be subject to Magistrate's orders as to disposal.
26. Magistrate may detain property and issue proclamation.
27. Confiscation of property if no claimant appears.
28. Persons refusing to deliver up certificate, etc., on ceasing to be police-officers.
29. Penalties for neglect of duty, etc.
30. Regulation of public assemblies and processions, and licensing of same.
Music in the streets.
30-A. Powers with regard to assemblies and processions violating conditions of license.
31. Police to keep order in public roads, etc.
32. Penalty for disobeying orders issued under last three sections, etc.
33. Saving of control of Magistrate of district.
34. Punishment for certain offences on roads, etc.
Power of police-officers.
Slaughtering cattle, furious riding, etc.
Cruelty to animals.
Obstructing passengers.
Exposing goods for sale.
Throwing dirt into street.
Being found drunk or riotous.
Indecent exposure of person.
Neglect to protect dangerous places.
35. Jurisdiction.
36. Power to prosecute under other law not affected.
Proviso.
37. Recovery of penalties and fines imposed by Magistrates.
38.
39. *Repealed.*
40.
41. Rewards to police and informers payable to General Police Fund.
42. Limitation of actions.
Tender of amends.
Proviso.
43. Plea that act was done under warrant.
Proviso.
44. Police-officers to keep diary.
45. Local Government may prescribe form of returns.
46. Scope of Act.
47. Authority of District Superintendent of Police over village police.

THE POLICE ACT, 1861.

(ACT No. V OF 1861).

[*22nd March, 1861.*]

Preamble.

Whereas it is expedient to re-organize the police and to make it a more efficient instrument for the prevention and detection of crime; It is enacted as follows:—

Interpretation-clause.

1. The following words and expressions in this Act shall have the meaning assigned to them, unless there be something in the subject or context repugnant to such construction, that is to say,—

the words "Magistrate of the district [1]" shall mean the chief officer charged with the executive administration of a district and exercising the powers of a Magistrate, by whatever designation the chief officer charged with such executive administration is styled:

the word "Magistrate [2]" shall include all persons within the general police-district, exercising all or any of the powers of a Magistrate:

the word "police" shall include all persons who shall be enrolled under this Act:

the words "general police-district [3]" shall embrace any presidency, province or place, or any part of any presidency, province or place, in which this Act shall be ordered to take effect:

[the words "District Superintendent" and "District Superintendent of Police" shall include any Assistant District Superintendent or other person appointed by general or special order of the Local Government to perform all or any of the duties of a District Superintendent of Police under this Act in any District [4]:]

the word "property" shall include any moveable property, money or valuable security:

words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number:

words importing the masculine gender shall include females:

the word "person" shall include a company or corporation:

the word "month" shall mean a calendar month:

the word "cattle[5]" shall, besides horned cattle, include elephants, camels, horses, asses, mules, sheep, goats and swine.

(Notes).

1.—"Magistrate of the District."

District Magistrate under Crim. Pro. Code.

Under S. 3, (2) Criminal Procedure Code (Act V of 1908), the expression "Magistrate of the District" in this Act shall be deemed to mean District Magistrate. **A**

2.—"Magistrate."

Meaning.

Under this Act any persons within the General Police District exercising all or any of the powers of a Magistrate, are held to be Magistrates. 1 W.R. 2 (Cr.). **B**

3.—"General Police-district."

(1) **Power of Governor-General to create General Police-district.**

Notwithstanding anything in this Act, the Governor-General in Council may, by notification in the Gazette of India, create a General Police District embracing parts of two or more Presidencies, Provinces or places. See S. 2 of the Police Act III of 1888. **C**

(2) **Power of Lieutenant-Governor to create General Police district.**

Under Bengal Police Act VII of 1869, S. 2, it shall be lawful for the Lieutenant Governor of Bengal, from time to time, to divide the said provinces into as many general police-districts as he may think fit; and from time to time to vary and alter any such general police-districts into one district, as he may think fit. **D**

(3) **The following have been declared to be General Police-districts.**

i. The Chittagong Hill Tracts. See the Chittagong Hill Tracts Regulation I of 1900, S. 6.

ii. The North West Frontier Province. See the North West Frontier Province Law and Justice Regulation. VII of 1901, S. 13.

iii. The following Assam Districts, *viz.*,

Kamrup	Khasia and Jaintia Hills
Darrang	Naga Hills
Nowgong	Cachar
Sibsagar	Goalpara
Lakhimpur	Sylhet
Garo Hills	

for one general Police-district, for which the Chief Commissioner of Assam has been appointed to exercise the powers of Inspector General of Police. See Home Department Notification No. 313, Sep. 12, 1874. **E**

4.—"The words 'District Superintendent'....district."

N.B.—This definition was added by the amending Act VIII of 1895, S. 1.

5.—"Cattle."

Defintion under Cattle Trespass Act.

Under S. 3 of the Cattle Trespass Act, cattle includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids. **F**

Constitution of the force.

2. The entire police-establishment under a Local Government shall, for the purposes of this Act, be deemed to be one police-force, and shall be formally enrolled; and shall consist of such number of officers and men, and shall be constituted in such manner, and the members of such force shall receive such pay, as shall from time to time be ordered by the Local Government, subject to the sanction of the Governor General of India in Council.

(Notes).

General.

(1) **Section not applicable to Bengal.**

This section was repealed by S. 1 of Bengal Police Act (VII of 1869, B.C.), so far as it relates to the provinces under the control of the Lieutenant Governor of Bengal. See S. 1 of Act VII of 1869, B.C. **G**

(2) **Police force in general police-districts created by Governor-General.**

The Governor-General in Council may direct the enrolment under this Act of a Police force for service in the general Police-district which he has created under the Police Act III of 1888. See S. 2 of Act III of 1888. **H**

(3) **Cantonment Police.**

The police-force employed in a Cantonment beyond the limits of a Presidency town shall be deemed to be part of the general police-establishment under the superintendence of the Local Government in whose territories the territories are situate. See S. 12 of the Cantonment Act XIII of 1889. **I**

Superintendence in the Local Government.

3. The superintendence of the police throughout a general police-district shall vest in and, subject to the general control of the Governor General of India in Council, shall be exercised by the Local Government [1] to which such district is subordinate; and, except as authorised under the provisions of this Act, no person, officer or Court shall be empowered by the Local Government to appoint, supersede or control any police functionary.

[(Notes).

1.—"Local Government."

Chief Commissioners.

The —— of Oudh, and British Burma, who are now Lieutenant Governors of the United Provinces of Agra and Oudh, and of Burma, respectively and the Chief Commissioner of Central Provinces have been delegated with the powers of a Local Government under this Act. See Gazette of India 1868 p. 358 and 1869 p. 18. **J**

Inspector General of Police, etc.

4. The administration of police throughout a general police-district shall be vested in an officer to be styled the Inspector-General of Police [1], and in such Deputy Inspectors-General and Assistant Inspectors-General as to the Local Government shall seem fit.

The administration of the police throughout the local jurisdiction of the Magistrate of the district shall, under the general control and direction of such Magistrate [2], be vested in a District Superintendent and such Assistant District Superintendents as the Local Government shall consider necessary.

The Inspector-General and other officers above-mentioned shall from time to time be appointed by the Local Government, and may be removed by the same authority.

(Notes).

1.—"Inspector General of Police."

Complaint to the Inspector General of Police.

See 9 P.W.R. (Cr.) 1908=7 Cr.L.J. 291, noted under S. 36, *infra*. **K**

2.—"Under the....Magistrate."

Subordination of police to Magistrates—Sanction to prosecute.

(*a*) District Police are subordinate only to the District Magistrate within the meaning of S. 195, Cr. P. Code. A.W.N. 1890, 167; A.W.N. 1895, 152; 6 O.C. 1 (8); 1 L.B.R. 101 (104). **K1**

(*b*) Where an application was made for revocation of sanction granted by the District Magistrate at the instance of a District Superintendent of Police on the ground that he had no jurisdiction, *held* that the District Magistrate had jurisdiction to grant the sanction as he purported to act as the head of the Police. A.W.N. 1904, 231=1 A.L.J. 597=27 A. 292. **K2**

(*c*) Where a District Magistrate directed the prosecution under S. 211, I.P.C., of a complainant whose case had been heard and determined by Magistrate of the first class, *held* that the order of the District Magistrate must be taken to have been made by him as head of the Police in respect of an offence committed before a Police officer and as such was a good order. A.W.N. 1890, 167. **K3**

(*d*) Where a District Magistrate gives the sanction at the request of the Police, who, it is contended, ought to have given it, the sanction is a proper one. 32 C. 180. **K4**

(*e*) But in 27 C. 452=4 C.W.N. 594, it was held that although police officers in a District are generally subordinate to the District Magistrate, the subordination contemplated by S. 195, Cr.P. Code is not such subordination. That subordination contemplates some superior officer of police. **K5**

5. The Inspector-General of Police shall have the full powers of a Magistrate [1] throughout the general police-district; but shall exercise those powers subject to such limitation as may from time to time be imposed by the Local Government.

Powers of Inspector-General. Exercise of powers.

(Note).

1.—"Full powers of a Magistrate."

Meaning.

The expression "full powers of a Magistrate" means Magistrate of the first class. See S. 3 (2) Crim. Pro. Code, 1898. **L**

6. [*Magisterial powers of police-officers.*] *Rep. by the Code of Criminal Procedure, 1882 (Act X of 1882).*

7. The appointment of all police-officers [1] other than those mentioned in section 4 of this Act shall, under such rules as the Local Government shall from time to time sanction, rest with the Inspector-General, Deputy Inspectors-General, Assistant Inspectors-General and District Superintendents of Police, who may, under such rules as aforesaid, at any time dismiss, suspend or reduce any police-officer whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same;

Appointment, dismissal, etc., of inferior officers.

or may award any one or more of the following punishments to any police-officer who shall discharge his duty in a careless or negligent manner, or who by any act of his own shall render himself unfit for the discharge thereof, namely :—

(*a*) fine to any amount not exceeding one month's pay;

(*b*) confinement to quarters for a term not exceeding fifteen days, with or without punishment drill, extra guard, fatigue or other duty [2];

(*c*) deprivation of good-conduct pay;

(*d*) removal from any office of distinction or special emolument.

N. B.—The 2nd para of this section *i.e.* from the words "or may award" to "special emolument" was substituted by S. 2 of Act VIII of 1895 for the words "or fine any police officer to any amount not exceeding one month's pay who shall discharge his duty in a careless or negligent manner, or by any act of his own, shall render himself unfit for the discarhge thereof," in the original section.

(Notes).

1.—"The appointment of all police officers."

(1) **Only section dealing with appointment.**

The only section which deals with the appointment of police officers is this section of the Act. 10 C.W.N. 727 (729). **M**

(2) **Scope of appointment.**

(*a*) If a police officer named in the Act appoints a constable at all, he can only appoint him under this section: and in that case he appoints him a constable for all purposes whatever. 10 C.W.N. 727=3 C.L.J. 475=3 Cr.L.J. 420. **N**

(*b*) The Act does not sanction the appointment by the Police authority of any person who is not to be under his orders, and for whose conduct he is not, from a disciplinary point of view, to be responsible. *Per Stephen, J.* 10 C.W.N. 727 (730)=3 C.L.J. 475=3 Cr.L.J. 420. **O**

(3) **Appointment of police officers with limited powers.**

When officers of the Society for the Prevention of Cruelty to Animals were given certificates appointing them as police officers but the certificate purported to limit their powers as such to the detection and prosecution of cases of cruelty to animals under S. 34, *infra* only, *held* that they were police officers appointed under this section, although in the certificate the appointment was erroneously stated as made under cl. (2) of S. 34, *infra*. 10 C.W.N. 727=3 C.L.J. 475=3 Cr.L.J. 420. **P**

2.—"Confinement....duty."

(1) **Confinement for an unlimited period is illegal.**

(*a*) An order for suspension and confinement of a police officer for an unlimited period of time exceeding the limits laid down in cl. (*b*) of this section, is illegal. 2 C.L.J. 616. **Q**

(*b*) Thus, where the District Superintendent of Police for some reason or other suspended a subordinate Police officer pending an enquiry into a certain matter and he also ordered him to remain in the lines all day and all night excepting two hours during the day-time, it was *held* that the order was an order for confinement for an unlimited period of time exceeding the limits laid down in cl. (*b*) of this section and was therefore illegal. (*Ibid.*) **R**

(2) **No conviction for disobeying such an order.**

It is not such an order which a District Superintendent of Police can legally pass at all, nor one which he can pass in the alternative under this section and no conviction under S. 29, *infra*, for disobeying such an order is maintainable. 2 C.L.J. 616. **S**

Certificates to police-officers.

8. Every police-officer so appointed shall receive on his appointment a certificate [1] in the form annexed to this Act [2], under the seal of the Inspector-General or such other officer as the Inspector-General shall appoint, by virtue of which the person holding such certificate shall be vested with the powers, functions and privileges of a police-officer.

3 Such certificate shall cease to have effect whenever the person named in it ceases for any reason to be a police-officer, and, on his ceasing to be such an officer, shall be forthwith surrendered by him to any officer empowered to receive the same.

Surrender of certificate.

4 A police-officer shall not by reason of being suspended from office cease to be a police-officer. During the term of such suspension the powers, functions and privileges vested in him as a police-officer shall be in abeyance, but he shall continue subject to the same responsibilities, discipline and penalties and to the same authorities, as if he had not been suspended.

(Notes).

1.—"Shall receive....certificate."

Certificate for a limited period.

There is no legal impediment to a certificate being granted to a man appointed for a limited period. Even a probationer who is appointed to fill a temporary vacancy should be given a certificate. See Bengal Police Manual, p. IV. **T**

2.—"In the form....Act."

(1) **Defect in certificate of appointment.**

When from the terms of the certificate it is clear that it was intended that the appointment was made under the provisions of this Act, the mere insertion of the words "cl. 2 of S. 34" before "Act V of 1861" and the words "for the detection and prosecution of cases of cruelty to animals under S. 34 of Act V of 1861" after the words police officer in the form attached to the Act does not invalidate the appointment. 10 C.W.N. 727 – 3 C.L.J. 475 = 3 Cr. L.J. 420. **U**

(2) **Actual exercise of powers—Power of arrest—Legal defect in certificate.**

Even if there be legal defect in the certificate of appointment, where it appeared that the persons to whom the certificates had been issued had actually exercised the powers conferred on them which, amongst others, included the taking of persons into custody, they fall within the description of public servant in Expl. I of S. 21, I P.C. read with cls. 7 and 8 of the said section. 10 C.W.N. 727. **V**

3.—"Paras 2 and 3."

Old section.

Paras 2 and 3 were substituted by the Amending Act VIII of 1895 for the original para which ran thus :—

"Such certificate shall cease to have effect whenever the person named in it is suspended or dismissed or otherwise removed from employment in the police-force and shall be immediately surrendered to the superior officer of such person or to some other officer empowered to receive the same." **W**

4.—"Para 3."

(1) **Object.**

"There can be no doubt as to its being desirable that a policeman, although under suspension, should remain subject to the obligations of duty and discipline till discharged from the service. A policeman while under suspension cannot be turned out of barracks while discipline in barracks must be maintained and insubordination or misconduct punished." *Per* Sir Antony Macdonell, Gazette of India, 1895, Pt. VI, p. 79. **X**

(2) **Police officer under suspension—His responsibilities.**

Although under the old section a police officer under suspension, from the mere circumstance of that suspension, ceased to be a police officer and was not subject to all the duties and responsibilities attaching to a police officer, under the present section, he is not free from all the responsibilities until he is discharged from the service. See 10 A. 459 = 1888 A.W.N. 169 ; 17 W.R. 12 (Cr.) = 8 B.L.R. App. 58. **Y**

Police-officer not to resign without leave or two months' notice.

9. No police-officer shall be at liberty to withdraw himself from the duties of his office, unless expressly allowed to do so by the District Superintendent or by some other officer authorized to grant such permission, or, without the leave of the District Superintendent, to resign his office, unless he shall have given to his superior officer notice in writing, for a period of not less than two months, of his intention to resign.

Police-officers not to engage in other employment.

10. No police-officer shall engage in any employment or office whatever other than his duties under this Act, unless expressly permitted to do so in writing by the Inspector-General.

11. *Rep. by the Repealing Act, 1874 (XVI of 1874).*

Power of Inspector-General to make rules.

12. The Inspector-General of Police [1] may, from time to time, subject to the approval of the Local Government [2], frame such orders and rules [3] as he shall deem expedient relative to the organization, classification and distribution of the police-force, the places at which the members of the force shall reside, and the particular services to be performed by them; their inspection, the description of arms, accoutrements and other necessaries to be furnished to them ; the collecting and communicating by them of intelligence and information ; and all such other orders and rules relative to the police-force as the Inspector-General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties.

(Notes).

1.—"The Inspector-General of Police."

(1) **Power to make rules.**

There is no express power given by the Act to any officer, save the Inspector-General of Police, to make rules. 15 C. 194. **Z**

(2) **Scope of the rules.**

He can do so under this section for, amongst other purposes, "preventing abuse or neglect of duty." 15 C. 194. **A**

2.—"Subject....Government."

Approval of Local Government necessary.

The Inspector-General can make rules under this section only subject to the approval of the Local Government. 15 C. 194. **B**

3.—"Rules."

Rules for the guidance of town watchmen.

As to——, see the Bengal Local Statutory Rules and Orders, Vol. I, 1903, p. 4. **C**

Additional police-officers employed at cost of individuals.

13. It shall be lawful for the Inspector-General of Police, or any Deputy Inspector-General, or Assistant Inspector-General, or for the District Superintendent, subject to the general direction of the Magistrate of the district, on the application of any person showing the necessity thereof, to depute any additional number of police-officers[1] to keep the peace at any place within the general police-district, and for such time as shall be deemed proper. Such force shall be exclusively under the orders of the District Superintendent, and shall be at the charge of the person making the application:

Provided that it shall be lawful for the person on whose application such deputation shall have been made, on giving one month's notice in writing to the Inspector-General, Deputy Inspector-General, or Assistant Inspector-General, or to the District Superintendent, to require that the police-officers so deputed shall be withdrawn; and such person shall be relieved from the charge of such additional force from the expiration of such notice.

(Notes).

"1.—Depute....officers."

(1) **Cost of additional police, who to bear.**

The Magistrate could only authorise deputation of police at the expense of the party making the application, under this section or obtain sanction of Government, issued through the Inspector-General of Police, to deputation of extra police and assessment of the cost under S. 15, *infra*, or simply send the ordinary police to keep the peace. 1 W.R. 15 (Cr.). **D**

(2) **Liability of a third person to bear cost.**

A Magistrate has no power to realise from any individual the cost of deputing a Police constable. 1 W.R. 15 (Cr.). **E**

Appointment of additional force in the neighbourhood of railway and other works.

14. Whenever any railway, canal or other public work, or any manufactory or commercial concern, shall be carried on, or be in operation in any part of the country, and it shall appear to the Inspector-General that the employment of an additional police-force in such place is rendered necessary by the behaviour or reasonable apprehension of the behaviour of the persons employed upon such work, manufactory or concern, it shall be lawful for the Inspector-General, with the consent of the Local Government, to depute such additional force to such place, and to employ the same so long as such necessity shall continue, and to make orders, from time to time, upon the person having the control or custody of the funds used in carrying on such work, manufactory or concern, for the payment of the extra force so rendered necessary, and such person shall thereupon cause payment to be made accordingly.

Quartering of additional police in disturbed or dangerous districts.

15. (1) It shall be lawful for the Local Government, by proclamation [1] to be notified in the official Gazette, and in such other manner as the Local Government shall direct, to declare that any area subject to its authority has been found to be in a disturbed or dangerous state, or that, from the conduct of the inhabitants of such area or of any class or section of them, it is expedient to increase the number of police.

(2) It shall thereupon [2] be lawful for the Inspector-General of Police, or other officer authorized by the Local Government in this behalf [3], with the sanction of the Local Government, to employ any police-force in addition to the ordinary fixed complement to be quartered in the area specified in such proclamation as aforesaid.

(3) Subject to the provisions of sub-section (5) of this section, the cost of such additional police-force shall be borne by the inhabitants of such area described in the proclamation.

(4) The Magistrate of the district, after such enquiry as he may deem necessary, shall apportion such cost [4] among the inhabitants who are, as aforesaid, liable to bear the same and who shall not have been exempted under the next succeeding sub-section. Such apportionment shall be made according to the Magistrate's judgment of the respective means within such area of such inhabitants.

(5) It shall be lawful for the Local Government by order, to exempt any persons or class or section of such inhabitants from liability to bear any portion of such cost.

(6) Every proclamation issued under sub-section (1) of this section shall state the period for which it is to remain in force, but it may be withdrawn at any time or continued from time to time for a further period or periods as the Local Government may in each case think fit to direct.

Explanation.—For the purposes of this section, "inhabitants" 5 shall include persons who themselves or by their agents or servants occupy or hold land or other immoveable property within such area, and landlords who themselves or by their agents or servants collect rents direct from raiyats or occupiers in such area, notwithstanding that they do not actually reside therein.

N.B.—This section was substituted for the original S. 15 by S. 4 of Act VIII of 1895.

(Notes).

1.—" Proclamation."

Issue of a preliminary proclamation necessary.

The notification of the proclamation by the Local Government must precede the further action to be taken in the direction of quartering an additional police-force under the section or of the award of compensation for injuries suffered under S. 16, *infra*. See Sir Macdonell's speech, Gazette of India, 1895, Pt. VI, p. 156; Report of the Select Committee, para 5; Gazette of India, 1895, Pt. V, p. 36. **F**

2.—" Thereupon."

Separation of action from proclamation.

This section separates the proclamation from the action taken in virtue of it. (*Ibid.*) **G**

3.—" Or other officer.... behalf."

Object.

" There are certain administrations such as Baluchistan and Ajmere in which there is no Inspector-General of Police and it is therefore necessary that the Local Government should have the power of investing particular officers with the functions of an Inspector-General of Police.

It may also be desirable that the Local Government should have the power of investing the Commissioner of a Division with the same functions. See Sir Macdonell's speech, Gazette of India, 1895, Pt. VI, p. 164. **H**

4.—" Apportion such cost."

Cost of deputation of extra police, who to bear.

See 1 W.R. 15 (Cr.) noted under S. 13, *supra*. **I**

5.—"Inhabitants."

(1) **Scope of the definition.**

The definition of inhabitants in the section means not only actual residents but also persons directly controlling property and therefore directly influencing the conduct of the people who reside in the proclaimed tract. See Macdonell's speech, Gazette of India, 1895, Pt. VI, p. 157. **J**

(2) **Object.**

The object of this definition is to impose responsibility on all who are in direct touch with the village and are therefore in a position to exercise direct influence over its affairs. (*Ibid.*) **K**

(3) **Who are not inhabitants.**

(*a*) A Bengal proprietor who has let the village in *patni*.

(*b*) A proprietor who has let a village on lease.

(*c*) A mortgagee not in possession. (*Ibid.*) **K-1**

Awarding compensation to sufferers from misconduct of inhabitants or persons interested in land.

15-A. (1) If, in any area in regard to which any proclamation notified under the last preceding section is in force, death or grievous hurt or loss of, or damage to, property has been caused by or has ensued from the misconduct of the inhabitants of such area or any class or section of them, it shall be lawful for any person, being an inhabitant of such area, who claims to have suffered injury from such misconduct to make, within one month from the date of the injury or such shorter period as may be prescribed, an application for compensation to the Magistrate of the district or of the sub-division of a district within which such area is situated.

(2) It shall thereupon be lawful for the Magistrate of the district, with the sanction of the Local Government after such enquiry as he may deem necessary, and whether any additional police-force has or has not been quartered in such area under the last preceding section, to—

(*a*) declare the persons to whom injury has been caused by or has ensued from such misconduct ;

(*b*) fix the amount of compensation to be paid to such persons and the manner in which it is to be distributed among them ; and

(*c*) assess the proportion in which the same shall be paid by the inhabitants of such area other than the applicant who shall not have been exempted from liability to pay under the next succeeding sub-section :

Provided that the Magistrate shall not make any declaration or assessment under this sub-section, unless he is of opinion that such injury as aforesaid has arisen from a riot or unlawful assembly within such area, and that the person who suffered the injury was himself free from blame in respect of the occurrences which led to such injury [1].

(3) It shall be lawful for the Local Government, by order, to exempt any persons or class or section of such inhabitants from liability to pay any portion of such compensation.

(4) Every declaration or assessment made or order passed by the Magistrate of the district under sub-section (2) shall be subject to revision [by the Commissioner of the Division or [2]] the Local Government, but save as aforesaid shall be final.

(5) No civil suit shall be maintainable in respect of any injury for which compensation has been awarded under this section.

(6) *Explanation.*—In this section the word "inhabitants" shall have the same meaning as in the last preceding section.

N.B.—This section was added by S. 5 of Act VIII of 1895.

(Notes).

General.

(1) **Object of the section.**

The actual perpetrators of the injury committed by a riotous crowd are usually unknown; and if they are known, they are often bad characters and men of straw, while the sufferers as a rule are poor men who cannot pay the costs of a civil suit. **L**

(2) **Source of the section.**

The principle of this section was taken from 49 and 50 Victoria, Chapter 38. **M**

(3) **Analogous provisions.**

(*a*) Punjab Frontier Crimes Regulation, Ss. 24, 25, 47. **N**

(*b*) Lower Burma Villages Regulation, Ss. 14 and 15. **O**

1.—"Provided....injury."

Object of the proviso.

The object of this proviso is to cut down the operation of the section. It is intended to apply the analogy of the English section which limits the compensation to cases of riots and tumults where, from the nature of the case, it is impossible to find out who committed the injury. **P**

2.—"The Commissioner of the Division or."

Omission of the above words.

For——, see North-West Frontier Province Law and Justice Regulation, VII of 1901, Sch. I. **Q**

Recovery of moneys payable under sections 13, 14, 15 and 15-A, and disposal of same when recovered.

X of 1882.

16. (1) All moneys payable under sections 13, 14, 15 and 15-A shall be recoverable by the Magistrate of the district in the manner provided by sections 386 and 387 of the Code of Criminal Procedure, 1882, for the recovery of fines [1], or by suit in any competent Court.

(2) All moneys paid or recovered under sections 13, 14 and 15 shall be credited to a fund to be called "The General Police Fund," and shall be applied to the maintenance of the police-force under such orders as the Local Government shall pass.

(3) All moneys paid or recovered under section 15-A shall be paid by the Magistrate of the district to the persons to whom and in the proportions in which the same are payable under that section.

N.B.--This section was substituted by S. 6 of Act VIII of 1895.

(Notes).

1.—"In the manner.... fines."

Fine to be recovered by distress and sale of moveable property.

(*a*) Under S. 386 of the Crim. Pro. Code, the Court issues a warrant for the levy of the amount of fine by distress and sale of any moveable property belonging to the offender. **R**

(*b*) Under S. 387 of the said Code, such warrant may be executed within the local limits of the jurisdiction of the Court issuing the warrant and it shall authorise the distress and sale of any such property without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found. **S**

Special police-officers.

17. When it shall appear that any unlawful assembly, or riot or disturbance of the peace has taken place, or may be reasonably apprehended [1], and that the police-force ordinarily employed for preserving the peace is not sufficient for its preservation and for the protection of the inhabitants and the security of property in the place where such unlawful assembly or riot or disturbance of the peace has occurred, or is apprehended [2], it shall be lawful for any police-officer not below the rank of Inspector to apply to the nearest Magistrate to appoint so many of the residents of the neighbourhood as such police-officer may require to act as special police-officers for such time and within such limits as he shall deem necessary; and the Magistrate to whom such application is made shall, unless he see cause to the contrary, comply with the application [3].

(Notes).

General.

Scope of the section.

(*a*) This section and sections 18 and 19, *infra*, deal with the appointment and powers of special constables and with the penalties to which they are liable. They are complete in themselves and appear to be intended to cover the case of persons appointed as special constables as far as those points are concerned. 10 C.W.N. 322 (332). **T**

(*b*) This section refers to cases of unlawful assembly, riot or disturbance of the peace only, and not to other kinds of offences. 10 B.L.R. App. 4 =18 W.R. 67 (Cr.). **U**

1.—"When it shall....apprehended."

(1) **When can special police officers be appointed.**

(*a*) No special police officer can be appointed except under some of the circumstances mentioned in this section. 10 B.L.R. App. 4 =18 W.R. 67 (Cr.). **V**

(*b*) They can be appointed only if it appears that any unlawful assembly, or riot or disturbance of the peace has taken place or may reasonably be apprehended. 10 B.L.R. App. 4=18 W.R. 67 (Cr.). **W**

(*c*) The circumstances which justify the appointment of special constables under this section are that a disturbance of the peace is apprehended and that the police force available is insufficient to preserve the peace and protect the inhabitants of the place where the disturbance is apprehended. 12 C.W.N. 366=7 Cr.L.J. 186=35 C. 454. **X**

(*d*) In a case where it was not clear that there was any danger of a disturbance of the peace or that if there was such a danger, the ordinary police force available was not sufficient to cope with it, it was *held* that the appointment of persons as special constables was unnecessary and inexpedient. 12 C.W.N. 727=8 C.L.J. 66=7 Cr.L.J. 507. **Y**

(2) **Circumstances justifying appointment of special constables absent—Effect.**

In the absence of circumstances which justify the appointment of special constables, an order under this section is improper and there should be no conviction of the persons so appointed for refusal to act in accordance with such appointment. 12 C.W.N. 366=7 Cr.L.J. 186=35 C. 454 ; 12 C.W N. 727=8 C.L.J. 66=7 Cr.L.J. 507. **Z**

(3) **Murder or apprehension of murder, no ground for appointment.**

Thus where a Magistrate appointed certain villagers as special constables under the section on the ground that a traveller passing through the village was brutally murdered in broad daylight while passing through the village, that many budmashes live in that village and that murders of a similar character might be committed, *held* that the order was illegal having regard to the provisions of this section. 10 B.L.R. App. 4=18 W.R. 67 (Cr.). **A**

(4) **Disputes regarding rights in land, no ground.**

In the case of disputes regarding rights in land, which have to be settled in Civil Courts, special constables should not be appointed. B.G. Cir. II 45 J. 27-2-1895. **B**

1.—"When it shall....apprehended"—(Concluded).

(5) **Procedure in cases not falling within the section.**

If in cases not falling within this section, the Magistrate considers the Police Force already entertained insufficient to prevent crime in the place, he should apply for sanction to an increase under S. 15, *supra*. (*Ibid.*) 18 W.R. 67 (Cr.) C

(6) **Dispute as to proprietary rights—Legality of appointing active men on one side as special constables.**

In a case of dispute as to proprietary rights, it is an abuse of the law and an act of oppression to appoint the active men on one side as special constables, in order to prevent their asserting their alleged rights and to give an advantage to the opposite party. 2 C.L.J. 555 – 10 C.W.N. 82. D

2—"Is not sufficient....apprehended."

(1) **Object of appointing special constables.**

(*a*) The only legitimate object for appointing special constables is to strengthen the ordinary police force by the addition of suitable persons to their number, when the ordinary force find themselves too few to meet an emergency. 10 C.W.N. 82 = 2 C.L.J. 555. E

(*b*) The appointment is not to be used for the purpose of influencing persons who are suspected of promoting disorder or disaffection otherwise than by the fear of physical force not even though that influence can correctly be described as enlisting them on the side of the peace. 10 C. W. N. 322. F

(2) **Arrest of special constables.**

The arrest of persons, appointed as special constables, by the Police, their detention in police custody till they execute a recognizance to appear before the Magistrate or the Police Inspector, and the taking of such recognizances from them are absolutely illegal. 2 C.L.J. 555 = 10 C. W.N. 82. G

3.—"Magistrate....application."

(1) **Order under this section, executive, not judicial.**

(*a*) An order passed by a Magistrate under this section appointing certain persons as special constables is one of a purely executive nature. 18 W. R. 67 (Cr.) = 10 B.L.R. App. 4; 10 C.W.N. 322. H

(*b*) This section "lays down that the Magistrate shall act on the application of the police officer and there is nothing whatever in the section to require him to enter into evidence and to determine whether the application is or is not based on sufficient grounds. He is to accept the application as sufficient unless he sees cause to the contrary apparently on the face of the application. The order is purely an executive order, the law only requiring that it shall be made by a responsible officer in the position of a Magistrate. The fact that the application may be made to the nearest Magistrate so far from indicating that it is to be made after a judicial enquiry, goes to show that the law contemplates the urgency for the order and the necessity of allowing the police officer to apply to the nearest Magistrate available." *Per Bret, J.* 10 C.W.N. 322. I

3.—"Magistrate....application"—(Concluded).

(c) "The position of the Magistrate is similar to that which he holds when he is called on to act under the provisions of Chap. IX of the Crim. Pro. Code for the purpose of dispersing unlawful assemblies. In neither case is he acting judicially." 5 C.W.N. 322 (325). **J**

(2) **High Court's interference with the order of Magistrate.**

"The law gives the Magistrate full discretion to appoint as special constables those persons whom he considers to be suitable, and it is neither open to the persons so appointed to refuse without good cause to serve on the ground that in their opinion they are not suitable persons to be appointed as special constables, nor is it open to the High Court, when a prosecution of certain persons has been ordered for refusal to serve, to go into the question whether the persons are suitable or not, and to set aside the order of prosecution if the persons are not suitable." *Per Bret, J.* 10 C.W.N. 322 (331). **K**

N.B.—In this case, *Stephen, J*, held the contrary view. On account of this difference of opinion, the case was referred to a third Judge (C.J.) and before the judgment was delivered by the latter, the Advocate-General withdrew the prosecution.

(3) **Where the order of Magistrate is illegal.**

Even where the order of the Magistrate appointing certain persons as special constables is illegal, the High Court cannot interfere in revision. 10 B.L.R. App. 4. **L**

Powers of special police-officers.

18. Every special police-officer so appointed shall have the same powers, privileges and protection, and shall be liable to perform the same duties and shall be amenable to the same penalties [1], and be subordinate to the same authorities, as the ordinary officers of police.

(Notes).

General.

(1) **Scope of the section.**

See 10 C.W.N. 322 (332) noted under S. 17, *supra*. **M**

1.—"Amenable to the same penalties."

(2) **Effect of this section on S. 29.**

This section lays down that special Police-officers shall be amenable to the same penalties as the ordinary officers of the police and the provisions of S. 29, *infra*, were not intended to apply to special constables and cannot be interpreted as so applying by the operation of the provisions of this section. 10 C.W.N. 322. **N**

Refusal to serve as special police-officers.

19. If any person being appointed a special police-officer as aforesaid shall, without sufficient excuse, neglect or refuse to serve [1] as such, or to obey such lawful order or direction as may be given to him for the performance of his duties, he shall be liable, upon conviction before a Magistrate, to a fine not exceeding fifty rupees for every such neglect, refusal or disobedience.

(Notes).

General.

Scope of the section.

See 10 C.W.N. 322 (332) noted under S. 17, *supra*. O

1.—"Refuse to serve."

(1) **Refusal on the ground that they are not suitable persons to be appointed.**

The law gives full discretion to the Magistrate to appoint as special constables those persons whom he considers as suitable and it is not open to the persons so appointed to refuse without good cause to serve on the ground that in their opinion they are not suitable persons to be so appointed. *Per Bret, J.* 10 C.W.N. 322. P

(2) **Refusal to accompany to police office to receive the order of appointment is no refusal to serve.**

Refusal to accompany a police-officer to the police office situated at some distance not for any purpose of police duty but simply to obtain the authority of appointment to serve as special constables and the necessary badges and arms does not amount to a refusal to serve as special constables and it does not constitute an offence under this section. 28 C. 411=5 C.W.N. 134. Q

Authority to be exercised by police-officers.

20. Police-officers enrolled under this Act shall not exercise any authority, except the authority provided for a police-officer under this Act and any Act which shall hereafter be passed for regulating criminal procedure.

(Notes).

(1) **Operation of the section.**

This section has been declared not to apply to an Assistant District Superintendent of Police, whose duties are exercised in connection with the unenrolled border Police force. See S. 2, of the Punjab Frontier Police Officers Regulation, VIII of 1893 (Gazette of India. 1893, Pt. I, p. 285). R

(2) **Restriction of the operation.**

For cases of—of this section see Ss. 2 and 3 of the Assam Police-Officers Regulation II of 1883, and S. 11 of the Burma Millitary Police Act, XV of 1887. S

Village police officers.

21. Nothing in this Act shall affect any hereditary or other village-police-officer, unless such officer shall be enrolled as a police-officer, under this Act. When so enrolled, such officer shall be bound by the provisions of the last preceding section. No hereditary or other village police-officer shall be enrolled without his consent and the consent of those who have the right of nomination.

Police-chaukidars in the presidency of Fort William.

If any police-officer appointed under Act XX of 1856 (*to make better provision for the appointment and maintenance of Police-chaukidars in Cities, Towns Stations, Suburbs and Bazars in the Presidency of Fort William in Bengal*) is employed out of the district for which he shall have been appointed under that Act, he shall not be paid out of the rates levied under the said Act for that district.

Police-officers always on duty and may be employed in any part of district.

22. Every police-officer shall, for all purposes in this Act contained, be considered to be always on duty, and may at any time be employed as a police-officer in any part of the general police-district.

Duties of police-officers.

23. It shall be the duty of every police-officer promptly to obey and execute all orders [1] and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace [2]; to prevent the commission of offences and public nuisances; to detect and bring offenders to justice and to apprehend all persons whom he is legally authorized to apprehend, and for whose apprehension sufficient ground exists [3]; and it shall be lawful for every police-officer, for any of the purposes mentioned in this section, without a warrant, to enter and inspect any drinking-shop, gaming-house or other place of resort of loose and disorderly characters.

(Notes).

1.—"Orders."

Order to purchase rafters etc.

A police constable was given money by the assistant moharir of his thana to purchase rafters and bamboos for repair of the thana. *Held* that the order to purchase rafters etc., was not an order of the kind contemplated by this section. 1891, A.W.N. 179. **T**

2.—"Communicate....peace."

(1) **Omission to give information is punishable under S. 177, I.P.C.**

Under the Act, it is the duty of a police-officer to communicate information to his superior officer regarding the commission of a riot affecting the public peace and to make an entry thereof in the diary which he is bound to keep under this section 44, *infra*, and the omission to give such information brings him within the purview of S. 177, I.P.C. 21 W.R. 30 (Cr.). **U**

(2) **False entry in the diary.**

(*a*) A police officer stationed at a police station is bound by law to enter in the general diary all reports of cognizable and non-cognizable cases made to him at the thana. This duty involved that he should truthfully enter those reports. If he makes a false report, he is liable to be punished under S. 177 I.P.C. 20 A. 151. **V**

2.—"Communicate....peace"—(Concluded).

(*b*) Thus where it was found by the Magistrate that there was a serious riot in which some persons were wounded and that some of the rioters were sent by the police to the thana of which the accused, a Police Sub-Inspector was in charge and that the accused took bail from them and that however in the diary kept by the accused nothing was entered about the riot but mention was made only of a petty assault in which the parties were told to prefer complaints before the Magistrate and nothing was entered about bail having been taken from any one and on these findings, the Magistrate convicted the accused under S. 177 I.P.C. *Held* that the accused was properly convicted. *Glover, J.* observing :—

"If Police officers are to be at liberty to give or withhold information regarding the public peace at their pleasure, for this would be the result of not being legally bound to give such information, their appointments might as well be abolished at once." 21 W.R. 30 (Cr.). **W & X**

3.—"For whose....exists."

(1) **No sufficient grounds for apprehension—Duty to arrest.**

If a Police officer believes that he has not sufficient grounds for apprehending a person against whom no proceedings have been directed, he is not bound under this section to arrest him. 26 W.R. 8 (Cr.). **Y**

Police-officers may lay information, &c.

24. It shall be lawful for any police-officer to lay any information before a Magistrate, and to apply for a summons, warrant, search warrant or such other legal process as may by law issue against any person committing an offence.

Police-officers to take charge of unclaimed property and be subject to Magistrate's orders as to disposal.

25. It shall be the duty of every police-officer to take charge of all unclaimed property [1], and to furnish an inventory thereof to the Magistrate of the district.

The police-officers shall be guided as to the disposal of such property by such orders as they shall receive from the Magistrate of the district.

(Note).

1.—"Unclaimed property."

Timber washed on one's estate by a river.

Timber claimed by a land owner as having been washed on his estate by a river is not unclaimed property within the meaning of this section and the following sections. 9 W.R. 97 (Cr.). **Z**

Magistrate may detain property and issue proclamation.

26. The Magistrate of the district may detain the property and issue a proclamation, specifying the articles of which it consists, and requiring any person who has any claim thereto to appear and establish his right to the same within six months from the date of such proclamation.

[(2) The provisions of section 525 of the Code of Criminal Procedure, 1882, shall be applicable to property referred to in this section.]

N.B.—Sub-S. 2 was added by S. 7 of Act VIII of 1895.

Confiscation of property if no claimant appears.

27. (1) If no person shall within the period allowed claim such property [1], or the proceeds thereof, if sold, it may, if not already sold under sub-section (2) of the last preceding section, be sold under the orders of the Magistrate of the district.

(2) The sale-proceeds of property sold under the preceding sub-section and the proceeds of property sold under section 26 to which no claim has been established shall be at the disposal of Government.

N.B.—This section was substituted by S. 8 of Act VIII of 1895.

(Note).

1.—"If no person....property."

Right of the finder of goods.

(*a*) The finder of goods has a right against the whole world except the real owner. 1903 U.B.R. Vol. I, Police p. 1. **A**

(*b*) Where a necklace was found by one M on a public road, who handed it over to the Pagan Myook and by order of the District Magistrate it was proclaimed for six months under the provisions of this section and the owner did not appear and it was then sold and the net proceeds were credited to Government, the Court set aside the sale, ordered the balance of the purchase money to be refunded to the purchaser and the necklace to be returned to the finder M. 1903 U.B.R. Vol. I, Police p. 1. **B**

Persons refusing to deliver up Certificate, etc., on ceasing to be Police-officers.

28. Every person, having ceased to be an enrolled police-officer under this Act, who shall not forthwith deliver up his certificate, and the clothing, accoutrements, appointments and other necessaries which shall have been supplied to him for the execution of his duty, shall be liable, on conviction before a Magistrate, to a penalty not exceeding two hundred rupees, or to imprisonment with or without hard labour, for a period not exceeding six months, or to both.

Penalties for neglect of duty, etc.

29. Every police-officer [1] who shall be guilty of any violation of duty [2] or wilful breach or neglect of any rule or regulation or lawful order [3] made by competent authority [4], or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months, [or who, being absent on leave [5], shall fail,

without reasonable cause, to report himself for duty on the expiration of such leave], or who shall engage without authority in any employment other than his police-duty, or who shall be guilty of cowardice, or who shall offer any unwarrantable personal violence to any person in his custody [6], shall be liable, on conviction before a Magistrate [7], to a penalty [8] not exceeding three months' pay, or to imprisonment, with or without hard labour, for a period not exceeding three months [9], or to both.

(Notes).

General.

(1) **Scope of the section.**

This section deals with offences constituted either by any violation of duty or wilful breach, or neglect of any rule or regulation, or lawful order, made by competent authority, on the part of a police officer. Any neglect of duty short of a violation of duty does not amount to an offence under this section. 12 C. 427. **C**

(2) **Section not applicable to special police officers.**

The provisions of this section were not intended to apply to special constables and cannot be interpreted as so applying, by the operation of the provisions of S. 18. 10 C.W.N. 322. **D**

(3) **Refusal to serve as special constables—No offence under the section.**

A person who has refused to act as a special constable cannot be prosecuted under this section. 10 C.W.N. 322. **E**

(4) **Effect of S. 18 on this section.**

"S. 18 lays down that special Police officers shall be amenable to the same penalties as the ordinary officers of the Police, but it is quite clear that the Special Police cannot be made by that section amenable to a fine not exceeding 3 month's pay as they receive no pay—the question then remains whether they can be made amenable to the alternative punishment of imprisonment. S. 18 was not intended to have that effect. This section must be read as a whole, and when a portion of it cannot be applied to the case of Special Police Officers, the only possible inference to be drawn as to the intention and scope of the provisions of this section is that they were not intended to apply to Special Constables and cannot be interpreted so as to apply to them." *Per Bret, J.* 10 C.W.N. 322 (332). **F**

(5) **Difference between this section and S. 42.**

Under this section, police officers are punishable for breaches of discipline or orders, committed by them as against their immediate superiors and the rules and regulations of the body in which they have been enrolled. The punishment follows at once upon the offence, and the procedure is of the ordinary character: a complaint to the Magistrate, a trial and conviction or acquittal. S. 42, *infra*, refers to all actions and prosecutions by persons deeming themselves injured against any person, which may be lawfully brought for anything done or intended to be done, under the provisions of the Act, or under the General Police powers given by it. The actions and prosecutions under S. 42 are subject to certain restrictions as to notice, limitation and tender of amends mentioned in that section. 7 N.W.P.H.C.R. 237. **G**

1.—"Police officer."

(1) **Section not applicable to persons who are not police officers.**

(*a*) This section refers to cases of neglect of duty, etc., committed by police officers and has no application to persons who are not police officers. 10 C.L.R. 521; 17 W.R. 12 (Cr.)=8 B.L.R. App. 58. **H**

(*b*) This section contemplates that the person to be charged with an offence under it must be, at the time of his doing the act in respect of which the charge is preferred, a police constable within the meaning of the Act. 10 A. 459. **I**

(*c*) Thus where a Magistrate acting merely on certain information contained in a letter addressed to him convicted, under this section, the Secretary of the Chittagong Brahmo Samaj for obstruction and nuisance, *held* that the latter could not be legally convicted there being no complaint and no evidence recorded. 10 C.L.R. 521. **J**

(2) **Head Constable detaining accused more than 24 hours.**

This section applies to the case of a Head Constable of Police who has been convicted under S. 154, Crim. Pro. Code of the offence of detaining an accused person, charged with theft, in custody for more than four and twenty hours. 1 W.R. 5 (Cr.). **K**

(3) **Police officer under suspension.**

Where a police officer was suspended, and was ordered to remain in the lines during the suspension, *held* that he was not guilty under this section for absenting himself therefrom without leave. 10 A. 459; 8 B.L.R. App. 58=17 W.R. 12 (Cr.).

N.B.—This was a decision under the original S. 8, before paras 2 and 3 of the present S. 8 were substituted by S. 3 of Act VIII of 1895. The present section expressly provides that a police officer shall not by reason of being suspended from office cease to be a police officer. **L**

2.—"Violation of duty."

(1) **Violation must be intentional.**

(*a*) The violation of duty, etc., intended in the section must be wilful, intentional violation of some clear duty or other. 19 W.R. 7 (Cr.). **M**

(*b*) Before a police officer can be convicted of an offence under this section, it must be found that he is guilty of more than mere neglect; he must be guilty of a violation of his duty which must mean an intentional violation. It is therefore necessary in such cases to enquire whether or not the violation of duty was deliberate and intentional. 17 W.R. 34 (Cr.)=8 B.L.R. App. 60. See, also, 1883 A.W.N. 42. **N**

(2) **Mere rashness or negligence before ordering search is no violation of duty.**

Mere rashness or negligence on the part of a police officer, before ordering the search of a man's house for stolen property does not constitute an offence amounting to violation of duty mentioned in this section. 19 W.R. 7 (Cr.). **O**

(3) **Police officer negligently submitting an incorrect report.**

A police officer negligently or improperly submitting an incorrect report of a local investigation may be punished under this section in cases where the proof is insufficient to bring the case under S. 218, I.P.C. 15 W. R. 17 (Cr.). **P**

2.—"Violation of duty"—(Concluded).

(4) **Mere indiscretion and carelessness in the conduct of inquiries.**

(a) Mere indiscretion and even carelessness with negligence in the conduct of inquiries preliminary to trial are no offences under this section. A.W.N. 1883, 42. **Q**

(b) A Sub-Inspector of Police was charged with great carelessness in conducting an enquiry in a murder case. The points made out against him were that he failed to record the statements of certain parties till late in his enquiry, and that he did not keep a proper lookout to ascertain whence one B got the ornaments which were found in her possession, and for which she was sent for trial and that he did not search the house of one K. On these findings he was convicted under this section and fined Rs. 100. *Held* that the findings did not not constitute any of the offences made punishable by this section. (*Ibid.*) **R**

(5) **Neglect to act on information while on other duty.**

Where a police officer who was charged with violating his duties in not acting on information given to him of the likelihood of a breach of the peace, which afterwards actually occurred, set up in defence that at the time he received the information, he was engaged *bona fide* in investigating another case, that is to say, he was engaged upon one of the duties of a police officer, was found guilty and convicted under this section, *held* that the conviction was illegal. 17 W.R. 34 (Cr.)=8 B.L.R. App. 60. **S**

(6) **Police officer authorised to depute need not proceed to the spot himself.**

A police officer who is authorised by law to depute his subordinate to proceed to a place where a crime is reported to have been committed cannot be legally convicted of wilful violation of duty by not proceeding to the spot himself. 1 Agra H.C.R. 1 (Cr.). **T**

(7) **Omission to attend extra drill.**

The petitioner who is a constable in G. Police Force was ordered by the District Superintendent of Police to cut down the jungle in the vicinity of the lines occupied by the said Police Force. On his refusal to obey this order, the District Superintendent ordered extra drill every day for the petitioner. He having failed to attend the extra drill was convicted and sentenced to three months' rigorous imprisonment. *Held* that this section does not provide for any such offence and that any neglect of duty short of a violation of duty does not amount to an offence under the section. 12 C. 427. **U**

(8) **Police officer liable for damages for ordering search of a man's house without sufficient grounds.**

A police officer, before ordering the search of a man's house for stolen property, should take care to have reasonable and sufficient ground for his proceedings; for if he does not, he is liable to be called upon to justify his acts in a suit brought against him by the injured party and may properly have to pay damages. 19 W.R. 7 (Cr.). **V**

3.—"Lawful order."

(1) **Meaning.**

The words "lawful order" used in the section mean an order which the "authority" mentioned therein is competent to make. 12 C. 427 (430). **W**

3.—"Lawful order"—(Concluded).

(2) **Difference between a rule, a regulation and a lawful order.**

A rule under the Act, officers are bound to know and obey. An order to bind an officer must be given to him and to make him punishable for not carrying it out, the fact of its having been given to him must be proved. Regulations or individual orders must be so framed and so promulgated or issued that the violation of them can be legally punished under the Act. 15 C. 194. **X**

4.—"Competent authority."

(1) **Inspector General of Police alone can make rules.**

There is no express provision given by the Act to any officer save the Inspector General of Police, to make rules; he can do so under S. 12, *supra*, for, amongst other purposes, preventing abuse or neglect of duty. Such rules must be made subject to the approval of the Local Government. 15 C. 194. **Y**

(2) **Power of District Superintendent of Police to make rules.**

(*a*) ORDERING CONSTABLES TO CUT DOWN JUNGLE IN THE VICINITY OF THE LINES.

It is not competent to a District Superintendent of Police to order his constables to cut down the jungle in the vicinity of their lines and on their refusal to do so, to order extra drill in respect of them. 12 C. 427. **Z**

(*b*) MAKING GENERAL RULE FOR THE PRESENCE OF CONSTABLES WITHIN THE LINES OF A PARTICULAR TIME.

The violation of a general rule made by a District Superintendent of Police to the effect that constables are to be within the lines at a particular time (say at 9 A.M.) or at roll-call is not punishable under this section. 15 C. 194. **A**

(*c*) SPECIAL ORDER REQUIRING PRESENCE WITHIN THE LINES.

But probably a special order requiring the presence of an officer or of certain officers within the Police lines, issued expressly to him or each of them, would come under this section as being not a "rule or regulation," but a "lawful order" made by competent authority and relating to the duties of the officer or officers (one of which is to be at hand when required for service). 15 C. 194. **B**

5.—"Or who being absent....leave."

N. B.—These words were added by S. 9 of Act VIII of 1895.

(1) **Overstaying leave without permission.**

If a police constable is granted casual leave for a limited period and does not at the end of that period, resume his duties, but stays away without obtaining fresh leave, he withdraws himself from his duties and "ceases to perform the duties of his office without leave" within the meaning of S. 44 of the Madras District Police Act. XXIV of 1859, corresponding to this section. 29 M. 192=3 Cr. L.J. 463. **C**

(2) **Old law.**

Where the accused, a constable, obtained leave of absence for one month, having at the same time provided a substitute and overstayed his leave twenty-nine days and was convicted and sentenced to one month's rigorous imprisonment under this section for withdrawing from the duties of his office without permission, the conviction and sentence were set aside as illegal. 6 A. 495. See, also, 6 C. 625. **D**

6.—"Unwarrantable....custody."

(1) **Oppressive conduct—Striking the accused.**

Where a Police officer was charged with unwarrantable personal violence in striking an accused person then in his custody because the accused person refused to answer questions as to his name and residence and it was alleged that the constable made the man's nose bleed, *held* that oppressive conduct on the part of the police must be somewhat severely punished. Burma Selected Judgment (1872-1892), p. 150. **E**

(2) **Person arrested detained in custody for more than 24 hours.**

(*a*) WHERE THERE WAS A CONTINUOUS DETENTION.

A police officer continuously detaining in custody a person arrested without warrant for more than 24 hours without the special order of a Magistrate is liable to conviction under this section. 19 W. R. 36 (Cr.). **F**

(*b*) WHERE THERE WAS NO CONTINUOUS DETENTION.

But—for over 24 hours, a Police officer cannot be convicted under this section. 1 W. R. 5 (Cr.). **G**

7.—"On conviction before a Magistrate."

(1) **Offence Magisterial.**

Offences under the section can be tried only by the Magistrate and not by a Sessions Judge. 1 W. R. 5 (Cr.). **H**

(2) **Competency of Magistrate.**

(*a*) DEPUTY MAGISTRATE.

(i) A Deputy Magistrate exercising the full powers of a Magistrate has jurisdiction to act under this section. 4 W.R. 2 (Cr.). **I**

(ii) Where, therefore, a Deputy Magistrate exercising the full powers of a Magistrate, after taking evidence, and on conviction, fined certain police officers for gross violation of their duties, *held* that the order was not illegal and that the Magistrate had jurisdiction under this section to make that order. 4 W.R. 2 (Cr.). **J**

(*b*) DISTRICT MAGISTRATE.

S. 556 of the Code of Criminal Procedure does not debar a District Magistrate, merely by reason of his being the head of the police of the district, from trying a person accused under this section of a breach of the orders of a Reserve Inspector of Police. 22 A. 340. **K**

(*c*) CANTONMENT MAGISTRATE.

A——has jurisdiction to try cases under this section without complaint. 1 Agra H. C. R. 24 (Cr.). **L**

(3) **Sub-Magistrate not to institute prosecution *suo moto*.**

A Sub-Magistrate is not competent, of his own motion, to institute prosecution. 2 N. W. P. 5. **M**

(4) **Jurisdiction over European British subjects.**

This section does not give to the Magistrate ——. 3 N.W.P. 128. **M1**

(5) **Accused's plea that he is a European British subject must be determined.**

In a prosecution under the Act, the plea of the accused that he is a European British subject and is therefore not amenable to the jurisdiction of the Magistrate, must be taken into consideration and be determined by the Magistrate. 3 N.W.P.H.C. R. 128. **N**

(6) **Magistrate competent to direct police enquiry.**

Under S. 133, Cr. P. C., a Magistrate is competent to direct an enquiry to be made by a police officer into an offence punishable under this Act. 14 W. R. 41 (Cr.). **O**

8.—"Penalty."

Penalty—Meaning.

(*a*) The word "penalty" in the section means the same thing as fine. 25 W. R. 20 (Cr.). **P**

(*b*) Acts or omissions punishable under this section come within the category of "offences punishable under any law other than the Indian Penal Code" as mentioned in S. 8, Crim. Pro. Code, 1872 (=S. 5 of Act V of 1898) and those offences likewise fall within the terms of S. 148 of Cr. P.C., 1872 (=S. 204 of Act V of 1898). 25 W. R. 20 (Cr.). **Q**

9.—"Imprisonment....months."

Punishment for *bona fide* mistakes.

Where a Sub-Inspector of Police was convicted and sentenced under this section to suffer one month's rigorous imprisonment for having searched a man's house without reasonable and probable grounds for such search, it was held that the Legislature did not intend to affix so serious a penalty as three months' imprisonment with or without hard labour, to a mere mistake committed by a police-officer (when *mala fides* are not imputed) in the execution of his duty. 19 W. R 7 (Cr.). **R**

MISCELLANEOUS.

Procedure.

(1) **Offence falling both under this Act and Penal Code.**

(*a*) An offence falling both under this Act and the Indian Penal Code should be punished under the Code. 11 P. R. 1874 (Cr.). **S**

(*b*) Where, therefore, a police constable allowed a prisoner to escape from the *havalat*, while the former was on duty as sentry and the Magistrate convicted and sentenced him to forfeit three months' pay under this section, the Chief Court of Punjab quashed the conviction and directed the accused to be tried under S. 221, I.P.C. 11 P. R. 1874 (Cr.). **T**

(2) **Police officer committing offence while not on duty.**

A police constable committing an offence when not on duty must be tried and punished under the Penal Code and not under this Act. 96 P. R. 1866 (Cr.). **U**

(3) **Who should prefer charge under the section.**

Any person aggrieved by the acts of a police-officer can prefer a charge against him under this section; it is not necessary that proceedings should be instituted by his departmental superior. 2 P. R. 68 (Cr.). **V**

(4) **No sanction is necessary for charges under the section.**

There is no provision in this Act requiring the sanction of Government or other competent authority before a Criminal Court can entertain a charge under this section. 2 P. R. 1868 (Cr.). **W**

(5) **S. 42, *infra*, has no connection with this section.**

S. 42, *infra*, has no bearing on, or connection with, this section. 7 N. W. P. H. C. R. 237. **X**

(6) **No notice is necessary for prosecutions under the section.**

The provisions of S. 42, *infra*, requiring notice in writing apply only to civil actions, not to criminal prosecutions under this section. 2 P. R. 1868 (Cr.). **Y**

MISCELLANEOUS—(*Concluded*).

Procedure—(*Concluded*).

(7) **Summary trial of offences under the section.**

(*a*) If there be any class of cases in which summary procedure is desirable, it is in cases where the conduct of a police-officer is being enquired into by a Magistrate under this section. 25 W.R. 20 (Cr.). **Z**

(*b*) But in 1 Agra H.C.R. 24 (Cr.) it was held that it is irregular and illegal for a Cantonment Magistrate to summarily convict and punish police officers under this section, without formal trial. 1 Agra. H.C.R. 24 (Cr.). **A**

(8) **Police officer—Not a competent witness.**

A police officer conducting a prosecution should never be sworn unless he is called as a witness and if so called he should be allowed to depose only those facts which he knows and of which he is in accordance with the provisions of the Evidence Act, a competent witness. 6 C.P.L.R. 1 (Cr.). **B**

(9) **Police recruit to enlist in his own name.**

A police recruit is legally bound to enlist under his own name and is liable to the penalty provided in S. 177, I.P.C., if he gives a false one. Oudh S.C. 11. **C**

(10) **Jurisdiction of Magistrate over European British subjects.**

See 3 N.W.P. H.C.R. 128. **C1**

(11) **Appeal.**

Convictions under the Act are appealable like other convictions. 5 W.R. 22 (Cr.). **D**

(12) **Construction.**

(*a*) This section must be read as a whole. See 10 C.W.N. 322 (332). **E**

(*b*) This Act should not be strained or turned to purposes for which it was not intended. 5 C.P.L.R. 92. **F**

Regulation of public assemblies and processions and licensing of same.

30. (1) That District Superintendent or Assistant District Superintendent of Police may, as occasion requires, direct the conduct of all assemblies and processions [1] on the public roads, or in the public streets or thoroughfares, and prescribe the routes by which, and the times at which, such processions may pass.

(2) He may also, on being satisfied that it is intended by any persons or class of persons to convene or collect an assembly in any such road, street or thoroughfare [2], or to form a procession which would, in the judgment of the Magistrate of the District, or of the sub-division of a district, if uncontrolled, be likely to cause a breach of the peace, require by general or special notice that the persons convening or collecting such assembly or directing or promoting such procession shall apply for a license.

(3) On such application being made, he may issue a license specifying the names of the licensees and defining the conditions on which alone such assembly or such procession is to be permitted to take place and otherwise giving effect to this section: Provided that no fee shall be charged on the application for, or grant of, any such license.

Music in the streets.

(4) He may also regulate the extent to which music may be used [3] in the streets on the occasion of festivals and ceremonies.

N.B.—This section was substituted for the original section, by S. 10 of Ac VIII of 1895.

(Notes).

1.—"Direct....processions."

Procession accompanied by music.

As to the necessity of obtaining permission for the conduct of processions accompanied by music and as to the authority whose permission is so required in Municipal towns. See Bengal G. Circular No. 768-T, 20th Oct. 1892. **G**

2.—"Such road, street or thoroughfare."

Scope.

These words (*viz.* such road, street or thoroughfare) show that it is not intended to restrict the right to hold public meeting. The words as originally framed were "place not being a private house or place of worship." These words being found capable of being misunderstood the present words were substituted. Report of the Select Committee. **H**

3.—"Regulate....used."

Suspension of music.

The regulation of the use of music in the streets includes the suspension when necessary of its use. Report of the Select Committee, para 9. **I**

Powers with regard to assemblies and processions violating conditions of license.

30-A. (1) Any Magistrate or District Superintendent of Police or Assistant District Superintendent of Police or Inspector of Police or any police officer in charge of a station may stop any procession which violates the conditions of a license granted under the last foregoing section, and may order it or any assembly which violates any such conditions as aforesaid to disperse.

(2) Any procession or assembly which neglects or refuses to obey any order given under the last preceding sub-section shall be deemed to be an unlawful assembly.

N.B.—This section was added by S. 11 of Act VIII of 1895.

Police to keep order in public roads, etc

31. It shall be the duty of the police to keep order on the public roads, and in the public streets, thoroughfares, ghats and landing-places, and at all other places of public resort, and to prevent obstructions on the occasions of assemblies and processions on the public roads and in the public streets, or in the neighbourhood of places of worship, during the time of public worship, and in any case when any road, street, thoroughfare, ghat or landing-place may be thronged or may be liable to be obstructed.

Penalty for disobeying orders issued under last three sections, etc.

32. Every person opposing or not obeying the orders issued under the last [three] preceding sections, or violating the conditions of any license [1] granted by the District Superintendent or Assistant District Superintendent of Police for the use of music [2], or for the conduct of assemblies and processions, shall be liable, on conviction before a Magistrate, to a fine not exceeding two hundred rupees

N.B.—In the second line the word "three" was substituted for "two" by S. 12 of Act VIII of 1895.

(Notes).

1.—"Opposing....license."

Orders and licenses must have previously been issued.

Orders and licenses must have been issued and granted under Ss. 30 and 31. *supra*, before the disobedience of such orders and the violations of the conditions of such license can be punished under S. 32. 5 C.P.L R. 92. **J**

2.—"For the use of music."

(1) **Playing music at night.**

(*a*) This Act does not apply to a case of playing music at night unless the District Superintendent of Police considers that the occasion required any intervention or interference on his part for the prevention of crime or preservation of order on the public roads and thoroughfares or that he issued any direction or gave any order in respect of the matter. 5 C.P.L.R. 92. **K**

(*b*) General control over certain matters is reserved to the Magistrate, but that does not impose on him the duties or confer on him the powers which the law imposes and confers on the District Superintendent of Police. 5 C.P.L.R. 92. **K-1**

(2) **Music, a nuisance—Non-applicability of the section.**

Where the playing of music was objected to not because it was likely to cause any disturbance or confusion in the public street but because playing music at night was looked upon as a nuisance, the question is then not one of police at all but one merely of convenience for which it is the duty of the Municipal Committee to arrange and this Act does not apply to such a case. 5 C.P.L.R. 92. **K-2**

Saving of control of Magistrate of district.

33. Nothing in the last [four] preceding sections shall be deemed to interfere with the general control of the Magistrate of the district over the matters referred to therein.

N.B.—In the first line "four" was substituted for "three" by S. 12 of Act VIII of 1895.

Punishment for certain offences on roads, etc.

34. Any person who, on any road or in any [open place [1] or] street or thoroughfare within the limits of any town to which this section shall be specially extended by the Local Government [2], commits any of the following offences, to the obstruction [3], inconvenience, annoyance, risk, danger or damage of the [residents or passengers] shall, on conviction before a Magistrate [4], be liable to a fine not exceeding fifty rupees, or to imprisonment [5] [with or without hard labour] not exceeding eight days; and it shall be lawful for any police-officer to take into custody, without a warrant, any person who within his view commits any of such offences, namely:—

Power of Police officers.

Slaughtering cattle, furious riding, etc.

First.—Any person who slaughters any cattle [6] or cleans any carcass; any person who rides or drives any cattle recklessly or furiously, or trains or breaks any horse or other cattle:

Cruelty to animals [7].

Second.—Any person who wantonly or cruelly beats, abuses [8] or tortures any animal:

Obstructing passengers.

Third.—Any person who keeps any cattle or conveyance of any kind standing longer than is required for loading or unloading or for taking up or setting down passengers, or who leaves any conveyance in such a manner as to cause inconvenience or danger to the public:

Exposing goods for sale [9].

Fourth.—Any person who exposes any goods for sale:

Throwing dirt into street.

Fifth.—Any person who throws or lays down any dirt, filth, rubbish or any stones or building materials; or who constructs any cowshed, stable or the like [10], or who causes any offensive matter to run from any house, factory, dung-heap or the like:

Being found drunk or riotous.

Sixth.—Any person who is found drunk or riotous or who is incapable of taking care of himself:

Seventh.—Any person who wilfully and indecently exposes his person, or any offensive deformity or disease, or commits nuisance by easing himself, or by bathing or washing in any tank or reservoir not being a place set apart for that purpose :

Indecent exposure of person.

Eighth.—Any person who neglects to fence in or duly to protect any well, tank or other dangerous place or structure :

Neglect to protect dangerous places. Jurisdiction.

N.B.—The words "open place" "with or without hard labour" were inserted by S. 12 of Act VIII of 1895 and Sch. II, S. 3 of Act I of 1903 respectively.

The words "residents or passengers" were substituted for "residents and passengers" by S. 13 of Act VIII of 1895.

(Notes).

1.—"Open place."

(1) **Object of the words.**

The words "open place" coupled with "road" "street" or "thoroughfare" must not be interpreted *ejusdem generis*. The addition of the words "open place" by the Amending Act (VIII of 1895) gives the section a wider significance, and this is shewn by another amendment in this section made at the same time, in which the annoyance etc. caused must not be "to the residents and passengers," but to "residents or passengers." The intention of the legislature was, therefore, to exclude the Act not only to passengers who would be on such a road, street or thoroughfare, but also to residents, who are not passengers. 27 C. 655. **L**

(2) **Open verandah is open place.**

See 27 C. 655. *infra.* **M**

2.—"Town....Government."

Towns to which this section has been extended.

As to—, see the Bengal Local Statutory Rules and Orders, 1903, Vol. I, pp. 4—11. **N**

(2) **Town includes a cantonment.**

See S. 12 (2) of the Cantonment Act XIII of 1889. **O**

3.—"Obstruction."

Placing tanbans in a thoroughfare.

Persons placing their tanbans in a public thoroughfare are guilty of an offence under this section. 7 N W.P.H.C.R. 5. **P**

4.—"On conviction before a Magistrate."

A Sub-Magistrate not competent to prosecute *suo moto*.

Where no complaint was made to the Magistrate, a subordinate Magistrate is not competent of his own motion to set on foot a prosecution. 7 N. W.P.H.C.R. 5. **Q**

5.—"Fine....imprisonment."

Imprisonment must be simple.

A substantive sentence of imprisonment under the section as well as a sentence of imprisonment in default of payment of fine under the section must be simple. L.B.R. (1872—1892), p. 434; U.B.R. (1897—1901), Vol. I, p. 363. **R**

6.—"Slaughters any cattle."

Slaughtering cow in an open verandah.

The slaughtering of cow in an open verandah so as to cause annoyance to the residents of that locality and in spite of their remonstrances, constitutes a breach of the law, being an act "in an open place" within the terms of this section as amended. 27 C. 655. **S**

7.—"Cruelty to animals."

Horses suffering from running barsati sores.

The petitioners were charged with having, on 6th August 1886, cruelly abused a pair of his horses. It was proved that prior to the date of the commission of the offence, the attention of one of the petitioners had been called by the District Superintendent of Police to the condition of the two horses and that he had been warned with regard to driving them. It was in evidence that the state of these horses, on the 6th August, was that they were bleeding from collar galls, badly galled and bleeding from both shoulders and also suffering from running barsati sores and that the matter that was running from them were likely to be productive of damage and risk to the public, and would naturally cause annoyance to any ordinarily humane person who saw them being driven in that state. *Held*, in revision that the petitioners were properly convicted. A.W.N. 1887, 67. **T**

8.—"Abuses."

(1) **Construction.**

The word "abuse" should be construed with reference to the other words with which it is associated in the 2nd clause" 28 P.R. 1885 (Cr.). **U**

(2) **Overloading ekka is not cruelly abusing horse.**

Where an ekka driver was convicted of cruelty to his horse for having had six persons in his ekka besides himself, to the chief Court quashed the conviction on the ground that there was no evidence of beating or torturing and that the word "abuse" cannot receive so wide a sense as to warrant a finding that overloading the ekka amounts to cruelly abusing the horse within the meaning of the section. 28 P.R. 1885 (Cr.). **V**

9.—"Exposing goods for sale."

(1) **Vouchers, not goods.**

Vouchers are not goods within the meaning of this section. 4 A.L.J. 44 = 1906 A.W N. 317. **W**

(2) **Delivery of vouchers, no offence.**

(*a*) The accused sat blocking a public road delivering vouchers for bets of sale of opium by the Government. He was found guilty under this Act and sentenced to fine. *Held*, that the delivery of vouchers for bets did not constitute an offence under clause 4 of this section. 4 A.L.J. 44 = A.W.N. 1906, 317. **X**

9.– "Exposing goods for sale"– (Concluded).

(*b*) "It would be straining the meaning of the clause to hold that M exposed goods for sale when he handed to the members of the crowd tickets or vouchers for their bets." *Per Richards, J.*, 4 A.L.J. 41=1906 A.W.N. 317. Y

10.—"Cow-shed, stable or the like."

Temporary shed for selling goods no offence.

One M set up a shop for the sale of cloth, consisting of a box and an awning, in a certain road, where temporary shops removable at night were ordinarily set up. He did not remove his shop at night and was convicted under this section for obstructing a public thoroughfare. The Court (Oldfield, J.) observed that the construction of a shed for the purpose of selling goods cannot be held to be an offence under clause 5 of this section, such a shed not being of the nature of a cowshed, stable or the like, to which the law refers. A.W.N. 1881, 61. Z

35. [illegible] Any charge against a police-officer above the rank of a constable under this Act shall be enquired into and determined only by an officer exercising the powers of a Magistrate.

Power to prosecute under other law not affected 1.

36. Nothing contained in this Act shall be construed to prevent any person from being prosecuted under any other Regulation or Act for any offence made punishable by this Act, or from being liable under any other Regulation or Act or any other or higher penalty or punishment than is provided for such offence by this Act.

Proviso.

Provided that no person shall be punished twice for the same offence.

(Notes).

"Power....affected."

Complaint to the Inspector-General of Police—Investigation by District Superintendent—Sub-Inspector charged with bribery.

Where H.D. sent to the Inspector-General of Police a few specific charges of bribery against the Sub-Inspector of Police and asked for investigation. The Inspector-General who is a Magistrate under S. 5 *supra* and is empowered by this section to enquire into and determine as a Magistrate any charge against a Police-officer above the rank of a constable, ordered the District Superintendent of Police to investigate and that officer forwarded the result of his investigation to the District Magistrate. *Held* that a false charge of an offence, preferred to a person empowered to order investigation by the police, though not followed by further proceedings in any Court, brings the matter of the charge under the first part of S. 211, I.P.C. 9 P.W.R. (Cr.) 1908=7 Cr.L.J. 291. A

Recovery of penalties and fines imposed by Magistrates.

37. The provisions of sections 64 to 70, both inclusive, of the Indian Penal Code [1], and of sections 386 to 389, both inclusive, of the Code of Criminal Procedure, 1882, with respect to fines, shall apply to penalties and fines imposed under this Act on conviction before a Magistrate. XLV of 1860. X of 1882.

Provided that, notwithstanding anything contained in section 65 of the first mentioned Code, any person sentenced to fine under section 34 of this Act may be imprisoned in default of payment of such fine for any period not exceeding eight days.

(Notes).

1.—"Sections....Penal Code."

What sections 64—70, I.P.C. relate to?

S. 64, I.P.C., deals with sentence of imprisonment in default of payment of fine.

S. 65 deals with limit to imprisonment for non-payment of fine, when imprisonment and fine awardable.

S. 66 deals with description of imprisonment for such default.

S. 67 deals with imprisonment for non-payment of fine, when offence punishable with fine only.

S. 68 says that imprisonment is to terminate on payment of fine.

S. 69 deals with termination of such imprisonment upon payment of proportional part of fine.

S. 70 deals with the period within which fine may be levied. **B**

2.—"Sections....procedure."

What Ss. 386 to 389, Cr. P. C. relates to.

S. 386, Cr. P. C. relates to warrant for levy of fine.

S. 387 relates to the effect of such warrant.

S. 388 relates to the suspension of execution of sentence of imprisonment.

S. 389 relates to the Courts competent to issue warrant. **C**

38. [*Procedure until return is made to warrant of distress.*] *Rep.—see the Police Act (1861) Amendment Act, 1895 (VIII of 1895), S. 14.*

39. [*Imprisonment if distress not sufficient.*] *Rep.—see the Police Act (1861) Amendment Act, 1895, (VIII of 1895), S. 14.*

40. [*Levy of fines from European British subjects.*] *Rep.—see the Police Act (1861) Amendment Act, 1895 (VIII of 1895), S. 14.*

Rewards to Police and informers payable to General Police Fund.

41. All sums paid for the service of process by police-officers, and all rewards, forfeitures and penalties or shares of rewards, forfeitures and penalties, which by law aprayaeble to informers shall, when the information is laid by a police-officer, be paid into the General Police Fund.

Limitation of actions.

42. *All actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done under the provisions of this Act, or under the general police powers hereby given* [1] *shall be commenced within three months after the act complained of shall have been committed, and not otherwise* [2]; and notice [3] in writing of such action and of the cause thereof shall be given to the defendant, or to the District Superintendent or an Assistant District Superintendent of the District in which the act was committed, one month at least before the commencement of the action.

Tender of amends.

No plaintiff shall recover in any such action if tender of sufficient amend shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant, and, though a decree shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the Judge before whom the trial is held shall certify his approbation of the action :

Proviso.

Provided always that no action shall in any case lie where such officers shall have been prosecuted criminally for the same act.

(Notes).

General.

Difference between this section and S. 29, *supra*.

See 7 N.W.P. H.C.R. 237 noted under S. 29, *supra*. **D**

1.—"Prosecutions....given."

(1) **Nature of prosecutions referred to in the section.**

This section protects a police-officer against dilatory prosecutions for acts done or purported to be done in the execution of his duty as a police-officer. It does not protect him against prosecutions for acts done apart from the execution of his duty. (1897—1901) U.B.R. Vol. I, 365 (367). **E**

(2) **Prosecution for acts done not under the Act.**

But if a police-officer falsifies records, accepts bribes, or misappropriates money in his charge, he cannot by any stretch of language be held to be acting in the execution of his duty. In doing these acts, he is not doing or intending to do anything under the provision of this Act or under his general police powers. (1897—1901), U.B.R. Vol. I, 365 (367). **F**

(3) EXAMPLE.

If in executing a warrant, a police-officer committed a common assault and caused hurt, under the pretext that it was necessary to use force in the execution of his duty, it would be held that this section applied to any prosecution that might be instituted. (1867—1901), U.B.R. Vol. I, 365 (367). **G**

2.—"Commenced....otherwise."

Prosecution barred after three months.

Certain police-officers (subordinate to the officer in charge of a police station arrested one A who was reasonably suspected of having committed theft and kept him in custody without the special order of a Magistrate for more than 24 hours, on the ground that the officer in charge of the police station was absent and that they waited for him to go into the case. More than three months after the detention they were prosecuted for wrongful confinement. *Held* that the prosecution was barred by this section, as what they did was intended to be done under the general powers given by the Act. 38 P. R. 1870 (Cr.). **H**

3.—"Notice."

(1) **Object of notice.**

The notice to be given is probably intended to give the party accused, time to prepare his defence or compromise the case, and is also intended to give the executive government time to determine whether the police officer accused or impleaded is to be supported or not. 7 N.W.P. H. C.R. 237. **I**

(2) **Notice when necessary.**

If the defendant acted or intended to act under the provisions of this Act, or if in the discharge of his duties as a public officer, he, through ignorance or inadvertence did something which was illegal or improper, he would be entitled to the notice required by this section or by the Code of Civil Procedure. 26 A. 210 (222). **J**

(3) **Notice, when not necessary.**

(*a*) Where the defendant did not purport to act in good faith in pursuance of the law, but took advantage of his position as a police-officer to commit illegal and tortuous acts, maliciously and without cause, he is not entitled to any notice under this section. 26 A. 220 (222). **K**

(*b*) In a suit to recover damages brought against a Sub-Inspector of Police who searched the house of plaintiff, dragged him to the thana, detained him there and kept him in confinement for several hours, the Court found that in acting as he did, the defendant was actuated by malice and he took advantage of his position as a police-officer and committed the acts complained of without sufficient cause. Under these circumstances it was held that the defendant was not entitled to any notice under this section. 26 A. 220. **L**

(4) **Objection as to notice to be taken at the earliest opportunity.**

Objection as to want of notice required to be given under the section must be taken in the Court of First Instance and it cannot be taken for the first time in the Appellate Court. 8 W.R. 425. **M**

(5) **Benefit of notice may be waived.**

There are certain Acts, which contain an express provision that no suit shall be brought unless notice is given. But in this section there is no declaration that a suit will not lie against a police officer unless a month's notice is given. This section only says that notice shall be given. Such provisions are for the benefit of the person protected by them and if not taken advantage of and pleaded in the first instance, cannot be made use of as a ground of appeal. 8 W.R. 425. **N**

Plea that act was done under warrant.

43. When any action of prosecution shall be brought or any proceedings held against any police-officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate.

Such plea shall be proved by the production of the warrant directing the act, and purporting to be signed by such Magistrate and the defendant shall thereupon be entitled to a decree in his favour, notwithstanding any defect of jurisdiction in such Magistrate. No proof of the signature of such Magistrate shall be necessary, unless the Court shall see reason to doubt its being genuine.

Proviso.

Provided always that any remedy which the party may have against the authority issuing such warrant shall not be affected by anything contained in this section.

(Note).

Privileges of a commandant or second-in-command of Military Police in Burma.

As to——, See The Burma Military Police Act, XV of 1887, S. 13. **O**

Police-officers to keep diary[1].

44. It shall be the duty of every officer in charge of a police-station to keep a general diary in such form as shall, from time to time, be prescribed by the Local Government, and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined.

The Magistrate of the District shall be at liberty to call for and inspect such diary.

(Notes).

1.—"Police-officers to keep diary."

(1) **Object of keeping general diary.**

One object of the general diary is to inform the Magistrate of the District and District Superintendent of Police of the offences which have been reported at the thana. 20 A. 151 (154). **P**

(2) **Refusal to enter report in diary.**

Where a police-officer to whom a report of the commission of an offence was made at the thana refused to enter in the diary the report so made but entered therein instead a totally different and false report as that which was made to him, it was *held* that he has committed an offence under S. 177, I.P.C. 20 A. 151. **Q**

(3) **Making false entry in the diary.**

See 21 W. R. 30 (Cr.) noted under S. 23, *supra*. **R**

(4) **Omission to give information.**

See 21 W. R. Cr. 30 noted under S. 23, *supra*. **S**

45. The Local Government may direct the submission of such returns by the Inspector-General and other police-officers as to such Local Government shall seem proper, and may prescribe the form in which such returns shall be made.

Local Government may prescribe form of returns.

46. (1) This Act shall not by its own operation take effect in any Presidency, province or place[1]. But the Governor-General in Council, by an order to be published in the Gazette of India, may extend the whole or any part of this Act to any Presidency, province or place [2], and the whole of such portion of this Act as shall be specified in such order shall thereupon take effect in such Presidency, prrovince or place.

Scope of Act.

(2) When the whole or any part of this Act shall have been so extended, the Local Government may, from time to time, by notification in the official Gazette, make rules consistent with this Act—

(*a*) to regulate the procedure to be followed by Magistrates and police-officers in the discharge of any duty imposed upon them by or under this Act;

(*b*) to prescribe the time, manner and conditions within and under which claims for compensation under section 15-A are to be made, the particulars to be stated in such claims, the manner in which the same are to be verified, and the proceedings (including local enquiries if necessary) which are to be taken consequent thereon ; and,

(*c*) generally, for giving effect to the provisions of this Act.

(3) All rules made under this Act may from time to time be amended, added to or cancelled by the Local Government.

N.B.—This section was substituted by S. 15 of Act VIII of 1895

(Notes).

1.—"Act....place."

(1) **Applicability of Act to the whole of British India for some purposes.**

For the purposes of S. 2 of the Police Act III of 1888, and subject to the provisions thereof, this Act shall, notwithstanding anything in this section, be deemed to take effect throughout the whole of British India. See Act III of 1888 S. 2 (6). **T**

(2) **Special Acts for provinces.**

(*a*) For Madras, see Madras District Police, Act XXIV of 1859 ; Madras City Police, Madras Act III of 1888.

(*b*) For Bombay, see Bombay District Police Act, Bombay Act VII of 1867 ; Bombay District Police Act Bom. Act IV of 1890.

(*c*) Bengal : Bengal Police Act—Beng. Act VII of 1869.

N.B.—This Act shall be read and taken as part of Act V of 1861 by virtue of S. 6 of the former Act.

Calcutta Police Act—Beng. Act IV of 1866. **U**

2.—"May extend....place."

Notifications extending the Act :—

For—under the powers conferred by this section :—

(*a*) Bengal and Assam, see Assam Local rules and orders, Ed. 1893, p. 3 ; see also the Bengal Local Statutory Rules and Orders, Vol. I, pp. 11—12.

(*b*) Central Provinces, see List of Local Rules and Orders, Ed. 1896, p. 4.

(*c*) Some districts of the Punjab, see Calcutta Gazette, dated 18th May 1861, p. 1302.

(*d*) Upper Burma (except the Shan States), see Burma Gazette, 1895, Pt. II p. 265.

(*e*) United Provinces of Agra and Oudh, see N.W.P. Gazette, 1861, p. 634 ; see also N.W.P. and Oudh List of Local Rules and Orders, Ed. 1894, pp. 31—32.

(*f*) Oudh, see N.W.P. Gazette, 1861, p. 1758.

(*g*) Tract of land between Allahabad and Jubbalpore ceded in full sovereignty by certain Native States, see Central Provinces List of Local Rules and Orders, Ed. 1896, p. 13.

(*h*) Madras Presidency (Ss. 15, 15-A, 16, 30, 30-A, 31 and 32 extended to,) see Gazette of India, 1895 Pt. I, p. 876. **V**

Authority of District Superintendent of Police over village police.

47. It shall be lawful for the Local Government, in carrying this Act into effect in any part of the territories subject to such Local Government, to declare that any authority which now is or may be exercised by the Magistrate of the district over any village watchman or other village-police-officer for the purposes of police, shall be exercised, subject to the general control of the Magistrate of the district, by the District Superintendent of Police [1].

(Notes).

1.—"Declare....Police."

Transferring to the District Superintendent of Police the authority of the Magistrate.

As to—, See

The Bengal Local Statutory Rules and Orders, Vol. I, p. 12. **W**

FORM.

(See section 8.)

A. B. has been appointed a member of the police-force under Act V of 1861, and is vested with the powers, functions and privileges of a Police-officer.

THE POLICE ACT, 1861.

INDEX.

Note. 1.—The thick figures at the end of each line refer to the pages of this volume and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S. in Brevier Roman denotes the section.

A

Abuse, Meaning of, in S. 34, *U*, **37.**

Abusing, animals, S. 34, **35.**

by overloading the animal, *V*, **37.**

Accoutrements, Persons refusing to deliver up, supplied for execution of duty, S. 28, **25.**

Accused, Head constable detaining, more than 24 hours, *K*, **27.**

Act, Extension of the, S. 46, **43.**

Scope of the, S. 46, **43.**

Application of the, S. 46, **43.**

Applicability of, to the whole of British India for some purposes, *T*, **43.**

Notifications extending the, *V*, **44.**

Act XX of 1856, Payment of rates levied under, S. 21, **23.**

Act III of 1888 (*Police*), Police force in General-Police-district created under, *H*, **7.**

Act VII of 1869 (*B.C.*), S. 1 repealed S. 2 of this Act—Extent of repeal, *G*, **7.**

S. 2—Power of Lieutenant Governor to create General police-district, *D*, **6.**

Act XV of 1887 (*Burma Military police*), S. 11- -Restriction of the operation of S. 20 of this Act, *S*, **22.**

S. 13—Privileges of a Commandment in Burma, *O*, **42.**

Action, under the Act when not lies, S. 42, **40.**

Actions, Limitation of, under the Act, S. 42, **40.**

Acts, Special, to provinces, *U*, **43.**

Additional Police, Cost of, who to bear, *D*, *E*, **13.**

officers employed at cost of individuals, S. 13, **13.**

Appointment of, near railway, S. 14, **14.**

——————— Canal, (*ibid*).

——————— other public work (*ibid*).

——————— Manufactory (*ibid*).

——————— other commercial concern (*ibid*).

Quartering of, in disturbed or dangerous districts, S. 15, **14.**

Exemption of person from liability to pay cost of, S. 15, **15.**

Administration, of police in General Police-districts, S. 4, **7.**

of police in a district vests in whom, S. 4, 7.

Amends, Tender of,—Effect on actions under the Act, S. 42, **40.**

Appeal, against convictions under the Act, *D*, **32.**

Appointment, of Special police officers ; See SPECIAL POLICE OFFICERS, SPECIAL CONSTABLES.

of Inspector General by whom to be made, S. 4, **8.**

of District Superintendent by whom to be made. S. 4, **8.**

of Assistant District Superintendent, S. 4, **8.**

of other Police Officers by whom to be made, S. 7, **9.**

section dealing with, *M*, **10.**

Scope of, *N*, *O*, **10.**

of police officers with limited powers, *P*, **10.**

Refusal to accompany police officer to receive order of, as special police officer, *Q*, **22.**

Persons refusing to deliver up, supplied for execution of duty, S. 28, **25.**

Apportionment, of costs of additional police force, S. 15, **14.**

Arrest, of special constables, *G*, **20.**

No sufficient grounds for apprehension—Duty to, *Y*, **24.**

Assemblies, Regulation of public, S. 30, **32.**

Powers with regard to, violating conditions of license, S. 30-A, **33.**

Penalty for breach of license for conduct of, S. 32, **34.**

Asses, included in cattle, S. 1, **6.**

Assessment, of compensation, S. 15-A, **17.**

under S. 15-A, (2) subject to revision, S. 15-A, **17.**

Authority, to be exercised by police officers, S. 20, **22.**

to make rules, *Y—B*, **29.**

Transferring, to District Superintendent of Police, the—of Magistrate, *W*, **44.**

of District Supt over village police, S. 47, **44.**

B

Bathing, in tank or reservoir not set apart for the purpose, S. 34, **36.**

Beating, animals, S. 34, **35.**

Bengal, S. 2, not applicable to, *G*, **7.**

Breach of peace, Reasonable apprehension of, necessary for appointment of Special police officer, S. 17, **18.**

Breaking, horse or other cattle on road, etc., S. 34, **35.**

British India, Applicability of Act to the whole of, for some purposes, *T*. **43.**

Building materials, Throwing, into street, S. 34, **35.**

Burma, Chief Commissioner of—Powers of a Local Government, *J*, **7.**

C

Camels, included in cattle, S. 1, **6.**

Canal, Additional police force near, S. 14, **14.**

Cantonment, Police, *I*, **7.**

Town includes, *O*, **36.**

Cantonment Magistrate, Competency of, to act under, *L*, **30.**

Carcass, Cleaning, on road, etc. S. 34, **35.**

Carelessness, no offence under S. 29, *Q*, *R*, **28.**

Cattle, What the term includes, S. 1, **6**.
Definition under Cattle Trespass Act. *F*, **6**.
Slaughtering cattle on road, etc., S. 34, **35**.
Training or breaking on road, etc., S. 34, **35**.
Certificate, to police officers, S. 8, **10**.
form of, of appointment, S. 8, *O* **10**.
Effect of holding, S. 8, **10**.
Surrender of, S. 8, **11**.
When shall cease to have effect, S. 8, **11**.
for a limited period, *T*, **11**.
Defect in, of appointment, *U*, **11**.
Legal defect in—Actual exercise of powers, *W*, **11**.
Persons refusing to deliver up, on ceasing to be police officers, S. 28, **25**.
Form of, **44**.
Charge, who should prefer under, S. 29, *V*, **31**.
Chief Commissioner, of Oudh and British Burma delegated with the Powers of a Local Government, *J*, **7**.
Civil suit, in respect of injury for which compensation has been awarded, S. 15-A, **17**.
Classification, of police force, S. 12, **12**.
Clothing, Persons refusing to deliver up, supplied for execution of duty, S. 28, **25**.
Commercial concern, Additional police force near, S. 14, **14**.
Company, Person includes, S. 1, **5**.
Compensation, Fixing the amount of, S. 15-A, **16**.
to sufferers from misconduct of inhabitants. S. 15-A, **16**.
to persons interested in land, 15-A, **16**.
Civil suit in respect of injury for which, has been awarded, S. 15-A, **17**.
Complaint, to Inspector-General of Police, *K*, **8**.
to Inspector-General against Sub-Inspector, *A*, **38**.
Confinement, to quarters not exceeded 15 days, S. 7, **9**.
for an unlimited period is illegal, *Q—R*, **10**.
No conviction for disobeying order of confinement for an unlimited period, *S*, **10**.
Confiscation, of unclaimed property, S. 27, **25**.
Consent, Necessary for enrolment of village police officers, S. 21, **22**.
Construction, Effect of S. 18 on S. 29, *F*, **26**.
of S. 29, *E*, **32**.
of the Act, *F*, **32**.
Conveyance, Keeping, on road, etc., S. 34, **35**.
Conviction, for disobeying an illegal order of confinement, *S*, **10**.
for refusal to deliver up certificates, etc., S. 28, **25**.
Corporation, Persons including, S. 1, **5**.
Cost, of additional police who to bear, *D*, **13**.
Apportionment of, of additional police force, S. 15, **14**.
of additional police force, S. 15, **14**.
Exemption of person from liability to, of additional police, S. 15 **15**.

Cow, Slaughtering, in an open verandah, *S*, **37**.

Cowshed, Constructing, on road, etc., S. 34, **35**.

Temporary shed on road, etc., for selling goods no offence, *Z*, **38**.

Crim. Pro. Code, S. 386—Procedure for recovery of moneys payable under Ss. 13—15-A, S. 16, 18, *R*, **18**.

Ss. 386—389—Recovery of penalties and fines, S. 37, **39**.

S. 387—See S. 386, *supra*, *S*, **18**.

S. 525—Applicable to unclaimed property, S. 26, **25**.

Cruelty, to animals, S. 34, **35**.

Horses suffering from barsati sores, *T*, **37**.

Custody, Striking person in,—oppressive conduct, *E*, **30**.

Person arrested detained in, for more than 24 hours, *F*, *G*, **30**.

D

Damage, ensued from misconduct of inhabitants, S. 15-A, **16**.

Damages, police officers liable for, for ordering search of a man's house without sufficient grounds, *V*, **28**.

Dangerous, Quartering of additional police in, districts, S. 15, **14**.

Dangerous places, Neglect to protect, S. 34, **36**.

Death, ensued from misconduct of inhabitants, S. 15-A, **16**.

Declaration, of persons injured by inhabitants, S. 15-A, **16**, **17**.

under 15-A (2) subject to revision, S. 15-A, **17**.

Defence, to action of prosecution against police officers, S. 43, **42**.

Deputy Magistrate, Competency of, to act under S. 29, *I*, *J*, **30**.

Detention, Head constable detaining accused more than 24 hours, *K*, **27**.

Diary, False entry in the, *V*—*X*, **23**, **24**.

Police Officers to keep, S. 44, **42**.

Object of keeping general, *P*, **42**.

Refusal to enter report in, *Q*, **42**.

Making false entry in, *R*, **42**.

Omission to give information, *S*, **42**.

Difference, between S. 29, and S. 42, *G*, **26**.

Dirt, Throwing, into street, S. 34, **35**.

Dismiss, Power to, police officers, S. 7, **9**.

Disobedience, of special police officers, S. 19, **21**.

of orders under Ss. 30—31—Penalty, S. 32, **34**.

Orders and licenses must have been issued before, *I*, **34**.

Disorderly characters, power of police officers to inspect place of resort of, S. 23, **23**.

Disposal, of moneys payable under Ss 13 to 15-A when recovered, S. 16, **18**.

of unclaimed property, S. 25, **24**.

Distinction, Removal from office of, S. 7, **9**.

Distribution, of police force, S. 12, **12**.

District Magistrate, See MAGISTRATE OF THE DISTRICT.

Competency of, to act under, S. 29, *K*, **30**.

District Superintendent, What the words, include, S. **1**, **5**.
of Police what the words include, S. 1, **5**.
Authority of, over village police, S. 47, **44**.
Transferring to, the authority of Magistrate, *W*, **44**.
Disturbed, Quartering of additional police in, districts, S. 15, **14**.
Drill, Confinement to quarters may be with or without, S. 7, **9**.
omission to attend extra, *U*, **28**.
Drinking shop, Power of police officers to inspect, S. 23, **23**.
Driving, Furious or reckless, on road, etc., S. 34, **35**.
Drunk, Being found, or riotous on road, etc., S. 34, **35**.
Duties, of police officers, S. 23, **23**.
Violation of, must be intentional, *M*, *N*, **27**.
Neglect to act on information while on other, *S*, **28**.

E

Easing, Committing nuisance by, S. 34, **36**.
Elephants. included in cattle, S. 1, **6**.
Emolument, Removal from office of special, S. 7, **9**.
Employment, police officer not to engage in other, S. 11, **12**.
Enrolment, of village police officers, S. 21, **22**.
Consent necessary for, of village police officers, S. 21, **22**.
European British Subject, Jurisdiction over, *M*, **30**.
Plea of being a, must be determined, *N*, **30**.
Executive, Order appointing persons as special constables is, *H—J*, **20**, **21**.
Exemption, of persons from liability to cost of additional police, S. 15, **15**.
Exposing, offensive deformity or disease, S. 34, **36**.
Exposure, Indecent, of person, S. 34, **36**.
Extension, of S. 34, *N*, **36**.
Notifications extending the Act, *V*, **44**.
of the Act, S. 46, **43**.
Extra drill, omission to attend, *U*, **28**.
Extra force, See ADDITIONAL POLICE FORCE.
Extra police, Cost of deputation of, who to bear, *H*, **15**.

F

False entry, in the diary, *V—X*, **23**, **24**.
Fatigue, Confinement to quarters may be with or without, S. 7, **9**.
Fee, on application for license for conducting assemblies and processions, S. 30, **33**.
On grant of license, S. 30, **33**.
Fence, Neglect to, well or tank, S. 34, **36**.
Filth, Throwing, into street, S. 34, **35**.
Finder of goods, Right of the, *A*, *B*, **25**.
Fine, not to exceed one month's pay, S. 7, **9**.
Forfeitures, payable to informers, S. 41, **39**.
Form, of returns by police officers may be prescribed by Local Government. S. 45, **43**.
of certificate, **44**.

Fort William, Police-Chowkidars in the Presidency of, S. 21, **23.**
Furious, driving on road, etc., S. 34, **35.**
riding on road, etc., S. 34, **35.**

G

Gaming house, power of police officers to inspect, S. 23, **23.**
General Police district, What the words, embrace, S. 1, **5.**
Persons exercising powers of a Magistrate within, S. 1, **5.**
Power of Governor-General to create, *C*, **6.**
Power of Lieutenant-Governor to create, *D*, **6.**
Places declared to be, *E*, **6.**
Superintendence of Police in, vests in Local Government, S. 3, **7.**
Administration of Police in a, S. 4, **7.**
created under Act III of 1888, *H*, **7.**
Powers of Inspector General in, S. 5, **9.**
Additional police officers in a, S. 13, **13.**
Every police officer may be employed in any part of, S. 22, **23.**
General Police Fund, what moneys should be credited to, S. 16, **13.**
Rewards to police and informers payable to, S. 41, **39.**
Goat, included in cattle, S. 1, **6.**
Good conduct, pay—Deprivation of, S. 7, **9.**
Goods, Exposing, for sale. S. 34, **35.**
Vouchers not, *W*, **37.**
Temporary shed on road, etc., for selling, no offence, *Z*, **38.**
Governor-General, Power of, to create General Police district, *C*, **6.**
Sanction of, necessary for rate of pay of police force, S. 2, **7.**
Superintendence of Police force is subject to control of, in Council, S. 3, **7.**
Grievous hurt, ensued from misconduct of inhabitants, S. 15-A, **16.**
Guard, confinement to quarters may be with or without, S. 7, **9.**

H

Hereditary, village police officers, S. 21, **22.**
High Court, interference by, of the order of appointing special constables, *K*, *L*, **21.**
Horse, training or breaking, on road, etc., S. 34, **35.**
Horses, suffering from barsati sores—cruelty, *T*, **37.**
included in cattle, S. 1, **6.**

I

Illegal, order of Magistrate appointing special constables, *L*, **21.**
Imprisonment, under S. 34 must be simple, *R*, **37.**
Incorrect report, police officer negligently submitting, *W*, **27.**
Indecent, exposure of person, S. 34, **36.**
Indiscretion, no offence under, S. 29, *Q*, *R*, **28.**
Information, omission to give, regarding commission of offence, S. 23, *U*, **23.**
Police officers may lay, before Magistrate, S. 24, **24.**

Inhabitants, what the term, includes, S. 15, **15.**

Compensation to sufferers from misconduct of, S. 15-A, **16.**

Scope of the definition of, *I*, **16.**

Object of the definition of, *J*, **16.**

who are not, *K*, **16.**

Injury, caused by inhabitants, S. 15-A, **16**, **17.**

Civil suit in respect of, for which compensation has been awarded, S. 15-A, **17.**

Inspect, power of police officers to, drinking shop, etc., S. 23, **23.**

Inspector-General, assistant—Administration of police, S. 4, **7.**

Deputy, Administration of police, S. 4, **7.**

Administration of Police in a General-police district vests in, of police, S. 4, **8.**

to be appointed and removed by Local Government, S. 4, **8.**

Complaint to, *K*, **8.**

Powers of, in general police district, S. 5, **9.**

Exercise of the powers of, S. 5, **9.**

Permission of, necessary for a police officer to engage in other employment, S. 10, **12.**

power of, to make rules, S. 12, **12.**

Power of Local Government to invest particular officers with functions of, of police, S. 15, **14**—Object, *H*, **15.**

Interpretation, of words and expression, S. 1, **5.**

Investigation, by Dt. Supt.—Complaint against Sub-Inspector, *A*, **38.**

J

Judicial, order appointing persons as special constables is not, *H—J*, **20, 21.**

Jurisdiction, offence under, S. 29, Magisterial, *H*, **30.**

Offence under S. 29—Competency of Deputy Magistrate, *I*, *J*, **30.**

Offence under S. 29—Competency of District Magistrate, *K*, **30.**

Offence under S. 29 - Competency of Cantonment Magistrate, *L*, **30.**

Offence under S. 29—Competency of Sub-Magistrate, *M*, **30.**

over European British subject, *N*, **30.**

to enquire into charge against police officers, S. 35, **38.**

L

Land disputes, no ground for appointing special constables, *B*, **19.**

Lawful order, meaning of, in S. 29, *W*, **28.**

Rule, Regulation and—difference, *X*, **29.**

Leave, police officer not to resign without, S. 9, **12.**

Overstaying, without permission, *C*, *D*, **29.**

Legal process, police officers laying information before Magistrate may apply for, S. 24, **24.**

License, for the Regulation of public assemblies and processions, S. 30, **32.**

No fee on application for, S. 30, **33.**

No fee for grant of, for conduct of processions and assemblies, S. 30, **33.**

Contents of, for conducting assemblies and procession, S. 30, **33.**

License—(Concluded).

Assemblies violating conditions of, S. 30-A, **33.**

Processions violating conditions of, S. 30-A, **33.**

Breach of conditions of, for conduct of assemblies and processions—Penalty, S. 32, **34.**

Breach of conditions of, for use of music—Penalty, S. 32, **34.**

Lieutenant-Governor, power of, to create General Police-district, *C*, **6.**

Limitation, of actions under the Act, S. 42, **40.**

Prosecution barred after 3 months, *H*, **41.**

Lines, see RULES.

Loading, keeping on road, etc., conveyance for, S. 34, **35.**

Local Government, police-establishment under a, to be deemed one police force, S. 2, **7.**

Pay of police-force to be ordered by, S. 2, **7.**

Superintendence of police vests in, S. 3, **7.**

Power of, to appoint, supersede or control police functionary, S. 3, **7.**

Chief Commissioners of Oudh and British Burma, *J*, **7.**

to appoint and remove Inspector-General, S. 4, **8.**

Approval of rules by, *B*, **13.**

power of, to invest particular officers with the functions of Inspector-General of police—Object, *H*, **15.**

may prescribe the submission of returns, S. 45, **43.**

may prescribe form of returns by police officers, S. 45, **43.**

may make, amend or cancel Rules under the Act, S. 46, **43.**

M

Magistrate, see JURISDICTION.

Meaning, S. 1, **5**; *B*, **6.**

Subordination of police to, *A—C*, **8.**

Full powers of a, —Meaning, *L*, **9.**

Competency of, under S. 29, *H—O*, **30.**

Competent to direct police enquiry, *O*, **30.**

Sub-Magistrate not competent to prosecute *suo moto*, *Q*, **36.**

Magistrate of the District, meaning, S. 1, **5**; *A*, **6.**

Administration of police in a district is—under, S. 4, **8.**

Power of, to fix amount of compensation awardable owing to misconduct of inhabitants, S. 15-A, **16.**

Power to assess proportion of compensation, S. 15-A, **16.**

Power to declare persons suffering from misconduct of "inhabitants," S. 15-A, **16.**

to pay moneys paid or recovered under S. 15-A, S. 16, **18.**

How to recover moneys payable under, Ss. 13-15-A, S. 16, **18.**

Control of, over matters referred to in Ss. 30—32, S. 33, **35.**

Manufactory, additional police force near, S. 14, **14.**

Masculine, words importing, gender include females, S. 1, **5.**

Misconduct, of inhabitants, S. 15-A, **16.**

Compensation to sufferers from, of inhabitants, S. 15, *S*, **16.**

Mistakes, punishment for *bona fide*, *R*, **31.**
Money, is property, S. 1. **5.**
Disposal of moneys payable under Ss. 13 to 15-A, when recovered, S. 16, **18.**
Moneys, recovery of, payable under Ss. 13 to 15-A ; S. 16, **18.**
Month, means calendar month, S. 1, **5.**
Mules, included in cattle, S. 1, **6.**
Murder, is no ground for appointing special constables, *A*, **19.**
Music, in the streets, S. 30, **33.**
Procession accompanied by, *G*, **33.**
suspension of, *H*, **33.**
Playing, at night, *J*, *K*, **34.**
a nuisance—Non-applicability of S. 32, *K*, **34.**

N

Neglect, to serve as special police officers, S. 19, **21.**
to act on information while on other duty, *S*, **28.**
to protect dangerous places, S. 34, **36.**
Negligence, before ordering search is no violation of duty, *O*, **27.**
Notice, Police officer not to resign without two months', S. 9, **12.**
to withdraw additional police, S. 13, **13.**
is not necessary for prosecution under, S 29, *Y*, **31.**
requiring persons directing processions to apply for license, S. 30, **32.**
requiring persons convening assembly to apply for license, S. 30, **32.**
of actions under the Act to whom should be given, S. 42 **40.**
of actions under the Act when to be given, S. 42, **40.**
Object of giving, before action, *I*, **41.**
before action when necessary, *J*, **41.**
before action when unnecessary, *K*, *L*, **41.**
Objection as to. to be taken at the earliest opportunity, *M*, **41.**
Benefit of, may be waived, *N*, **41.**
Notifications, extending the Act, *V*, **44.**
Nuisance, committing, by easing, S. 34, **36.**

O

Objection, as to notice when to be taken, *M*, **41.**
Obstructing, passengers by keeping conveyance on road, etc., S. 34, **35.**
Offence, falling both under this Act and Penal Code—Procedure, *S*, *T*, **31.**
Police officer committing, while not on duty, *U*, **31.**
Who should prefer charge for, under S. 29, *V*, **31.**
on road, etc. S. 34, **35.**
Offensive, Exposing, disease, S. 34, **36.**
Exposing, deformity, S. 34, **36.**
Offensive matter, Causing, to run from house, etc., S. 34, **35.**
Office, Removal from, of distinction, S. 7, **9.**
Removal from, of special emolument, S. 7, **9.**
Police officer not to engage in other, S. 10, **12.**

Omission, to attend extra drill, *U*, **28.**

Open place, Committing certain offences on, etc. S. 34, **35.**

Object of the words, in S. 34, *L*, **36.**

Open verandah is, *M*, **36.**

Order, appointing persons as special constables is executive not judicial, *H—J*, **20**, **21.**

of appointment of special constables—Revision, *K*, *L*, **21.**

Refusal to accompany police officer to receive, of appointment, *Q*, **22.**

Police to keep, in public roads, etc., S. 31, **34.**

Orders to purchase, rafters, etc., for repair of thana not within, S 23, *T*, **23.**

Organization, of police force, S. 12, **12.**

Oudh, Chief Commissioner of,—Powers of a Local Government, *J*, **7.**

Overloading, ekka is no cruelty abusing horses, *V*, **37.**

Overstaying, leave without permission, *C*, *D*, **29.**

P

Passengers, Obstructing on road, etc., S. 34, **35.**

Pay, Deprivation of, of good conduct, S. 7, **9.**

of Police force to be ordered by Local Government subject to sanction of Governor-General *S*, **27.**

Penal Code, Ss. 64—70—Recovery of penalties and fines, S. 37, **39.**

Penalties, for neglect of duty, etc., S. 29, **25**, **26**; Scope of, S. 29, *C*, **26.**

Difference between S. 29 and S. 42, *G*, **26.**

payable to informers, S. 41, **39.**

Penalty, Meaning, *P*, *Q*, **31.**

for disobeying orders under Ss. 30—31, S. 32, **34.**

for violating conditions of license for the conduct of assemblies and processions, S. 32, **34.**

for violating conditions of license for use of music, S. 32, **34.**

Permission, Necessary for a police officer to engage in other employment, S. 10, **12.**

Overstaying leave without, *C*, *D*, **29.**

Person, includes company or corporation, S. 1, **5.**

Plural, words importing, include singular, S. 1, **5.**

Police, Term includes persons enrolled under the Act, S. 1, **5.**

Cantonment, *I*, **7.**

Quartering of additional, in disturbed districts, S. 15, **14.**

to keep order in public roads, etc. S. 31, **34.**

Rewards to, and informers payable to General Police Fund, S. 41, **39.**

Authority of District Superintendent over village, S. 47, **44.**

Police chowkidars, in the Presidency of Fort William, S. 21, **23.**

Police enquiry, Competency of Magistrate to direct, *O*, **30.**

Police force, constitution of, S. 2, **7.**

in general police district created by Act III of 1888, *H*, **7.**

Residence of, S. 12, **12.**

Organization, classification and distribution of, S. 12, **12.**

Appointment of additional, near public work or commercial concern, S. 14, **14.**

insufficient to prevent crime—Procedure in cases not falling in, S. 17, **20.**

Police functionary, Power of Local Government to appoint, supersede, and control, S. 3, **7.**

Police officer, Duty to surrender certificate on ceasing to be, S. 8, **11.**

Certificates ceases to have effect when the person named in it ceases to be a, S. 8, **11.**

Shall not cease to be a police officer by reason of being suspended, S. 8, **11.**

During suspension, powers of, shall be in abeyance, S. 8, **11.**

Not to resign without leave or two months' notice, S. 9, **12.**

Not to engage in other employment, S. 10, **12.**

withdrawing from the duties of his office, S. 9, **12.**

guilty of violation of duty, S. 29, **25.**

guilty of wilful breach or neglect of any rule or regulation or lawful order, S. 29, **25.**

withdrawing from duties of his office without permission or notice, S. 29, **25.**

Overstaying leave, S. 29, **26.**

engaging in other employments, S. 29, **26.**

guilty of cowardice, S. 29, **26.**

offering unwarrantable violence to person in custody, S. 29, **26.**

Committing offence while not on duty, *U*, **31.**

not a competent witness, *B*, **32.**

Jurisdiction to enquire into charge against, S. 35, **38.**

Police officers, See VILLAGE POLICE OFFICERS.

Certificate to, S. 8, **10.**

under suspension—His responsibilities, *Y*, **12.**

Additional, employed at cost of individuals, S. 13, **13.**

Special, S. 17, **18.**

Authority to be exercised by, S. 20, **22.**

appointed under Act XX of 1856, S. 21, **23.**

may be employed in any part of general police district, S. 22, **23.**

Considered to be always on duty, S. 22, **23.**

Duties of, S. 23, **23.**

may lay information before Magistrate, S. 24, **24.**

Subject to Magistrate's order as to disposal of unclaimed property, S. 25, **24.**

to take charge of unclaimed property, S. 25, **24.**

Persons refusing to deliver up certificates, etc., on ceasing to be, S. 28, **25.**

S. 29 not applicable to special, *D*, **26.**

S. 29 not applicable to persons who are not, *H—J*, **27.**

under suspension—Applicability of, S. 29, *L*, **27.**

Negligently submitting incorrect report, *W*, **27.**

authorized to depute need not themselves proceed to the spot, *T*, **28.**

liable for damages for ordering search without sufficient grounds, *V*, **28.**

Power to take into custody persons committing offence, S. 34, **35.**

to keep diary, S. 44, **42.**

Police recruit, to enlist in his own name, *C*, **32.**
Procedure, for recovery of moneys payable under Ss. 13—15-A, S. 16, **18.**
offence falling both under this Act and Penal Code, *S*, *T*, **31.**
Police officer committing offence while not on duty, *U*, **31.**
No sanction is necessary for charges under S. 29, *W*, **31.**
Who should prefer charge under S. 29, *V*, **31.**
No notice is necessary for prosecution under S. 29, *Y*, **31.**
Summary trial of offences under S. 29, *Z*, *A*, **32.**
Procession, accompanied by music, *G*, **33.**
Processions, Regulation of, S. 30, **32.**
Powers with regard to, violating conditions of license, S. 30-A, **33.**
Penalty for breach of license for conduct of, S. 32, **34.**
Proclamation, Separate from action taken in virtue of it, *G*, **15.**
Notifying disturbed or dangerous districts, S. 15, **14.**
under S. 15, what to state, S. 15, **15.**
Issue of preliminary, necessary, *F*, **15.**
with regard to unclaimed property, S. 26, **24.**
Property, Term includes moveable, money or valuable security, S. 1, **5.**
Prosecute, Power to, under other laws not affected, S. 36, **38.**
Prosecution, Nature of, referred to in, S. 42, *E*, **40.**
for acts done not under the Act, *F*, *G*, **40.**
barred after three months, *H*, **41.**
Plea that act was done under warrant, S. 43, **42.**
Defence to action of, against police officers, S. 43, **42.**
Limitation for, under the Act, S. 42, **40.**
Public assemblies, Regulation of, S. 30, **32.**
Public roads, Conducting assemblies and processions in, S. 30, **32.**
Duty of police to keep order in, S. 31, **34.**
Public streets, Conducting assemblies and processions in, S. 30, **32.**
Duty of police to keep order in, S. 31, **34.**
Public work, Additional police force near, S. 14, **14.**
Punish, Power to, police officers, S. 7, **9.**
Punishment, for *bona fide* mistakes, *R*, **31.**
for certain offences on roads, etc., S. 34, **35.**
twice for the same offence, S. 36, **38.**
Punishments, that may be awarded to a police officer, S. 7, **9.**

Q

Quartering, of additional police in disturbed or dangerous districts, S. 15, **14.**
Quarters, See CONFINEMENT.

R

Railway, Additional police force near, S. 14, **14.**
Rashness, before ordering search is no violation of duty, *O*, **27.**
Reckless, riding or driving on road, etc., S. 34, **35.**

Recovery, of moneys payable under Ss. 13 to 15-A, S. 16, **18.**

Reduce, Power to, police officers, S. 7, **9.**

Refusal, to serve as special police officers, S. 19, **21.**

to serve as special police officers on the ground that they are not suitable persons to be appointed, *P*, **22.**

to accompany police officer to receive order of appointment, *Q*, **22.**

to deliver up certificate, etc., on ceasing to be police officers, S. 28, **25.**

to serve as special constables no offence under S. 29, *E*, **26.**

to enter report in diary, *Q*, **42.**

Regulation, lawful order, rule, and,—Difference, *X*, **29.**

Regulation of 1883 (*Assam Police officers*), Ss. 2 and 3—Restriction of the operation of, S. 20 of the Act, *S*, **22.**

Regulation VIII of 1893 (*Punjab frontier police officers*), S. 2—Applicability of, S. 20 of the Act, *R*, **22.**

Removal, of Inspector-General by whom to be made, S. 4, **8.**

from any office of distinction or special emolument, S. 7, **9.**

Report, Refusal to enter, in diary, *Q*, **42.**

Residence, of police force, S. 12, **12.**

Resign, Police officer when can resign, S. 9, **12.**

Returns, Form of, by police officers may be prescribed by Local Government, S. 45, **43.**
Local Government may direct the submission of, by police officers, S. 45, **43.**

Revision, of declaration or assessment under S. 15-A (2), S. 15-A. **17.**
of order of Magistrate appointing special constables, *K*, *L*, **21.**

Rewards, payable to informers, S. 41, **39.**

Riding, Furious or reckless, on road, etc., S. 34, **35.**

Riot, Injury by inhabitants arising from, S. 15-A, **17.**

Reasonable apprehension of, necessary for appointment of special police officer, S. 17, **18.**

Riotous, Being found, on road, etc., S. 34, **35.**

Road, See PUBLIC ROADS.
Committing certain offences on, etc., S. 34, **35.**
Cleaning carcass on, S. 34, **36.**
Scope of the word, in S. 30, **33.**

Robbery, Sub-Inspector charged with robbery—Jurisdiction, *A*, **38.**

Rubbish, Throwing, into street, S. 34, **35.**

Rule, Lawful order, Regulation and—Difference, *X*, **29.**

Rules, Power of Inspector-General to make, S. 12, **12**; *Z*, **13**; Scope of the rules *A*, **13.**
for the guidance of town watchman, *C*, **13.**
District Superintendent making general, for the presence of constable within the lines in a particular time, *A*, **29.**
Special order requiring presence within the lines, *B*, **29.**
Inspector-General of Police alone can make, *Y*, **29.**
Power of District Superintendent of Police to make, *Z*—*B*, **29.**
District Superintendent ordering constables to cut down jungle in the vicinity of the lines, *Z*, **29.**
Power of Local Government to make, amend or cancel, S. 46, **43.**
to regulate procedure, S. 46, **43.**

S

Sanction, to prosecute—Subordination of police to Magistrates, *A—C*, **8.**
is not necessary for charges under S. 29, *W*, **31.**

Search, Rashness or negligence before ordering, is no violation of duty, *O*, **27.**
no ground for,—Damages, *V*, **28.**

Search-warrant, Police officers laying information before Magistrate may apply for, S. 24, **24.**

Sheep, included in cattle, S. 1, **6.**

Singular, words importing, include plural, S. 1, **5.**

Slaughtering, Cattle on road or open place or thoroughfare, S. 34, **35.**
Cow in an open verandah, *S*, **37.**

Special Acts, for provinces, *U*, **43.**

Special constables, See SPECIAL POLICE OFFICERS.
Murder or apprehension of murder no ground for appointment of, *A*, **19.**
Disputes regarding rights in land, no ground for appointing, *B*, **19.**
circumstances justifying appointment of, absent—Effect, *Z*, **19.**
Dispute as to proprietary rights—Legality of appointing active men on one side as, *D*, **20.**
Object of appointing, *E*, *F*, **20.**
Arrest of, *G*, **20.**
Order appointing persons as, is executive, *H—J*, **20, 21.**
Revision of order of Magistrate appointing, *K*, *L*, **21.**
Refusal to serve as, no offence under S. 29, *E*, **26.**

Special Police officers, See SPECIAL CONSTABLES.
Appointment of, S. 17, **18.**
Application for appointment of, when can be made, *S*, **17, 18.**
——————————, to whom shall be made, (*ibid.*).
——————————, who can make (*ibid.*).
Application for appointment of, who can grant, *S*, **17. 18.**
Who can be appointed as, S. 17, **18.**
When can be appointed, *V—Y*, **19.**
Disobedience of, S. 19, **21.**
Refusal to serve as, S. 19, **21.**
Powers of, S. 10, **28**; Effect of S. 18 on S. 29, *N*, **21.**
Refusal to serve on the ground that they are suitable person to be appointed, *P*, **22.**
S. 29 not applicable to, *D*, **26.**

Stable, Constructing, on road, etc. S. 34, **35.**

Stones, Throwing, into street, S. 34, **35.**

Streets, See PUBLIC STREETS.
Music in the, S. 30, **33.**
Scope of the word in S. 30, *H*, **33.**
Committing certain offences on, etc., S. 34, **35.**

Sub-Inspector, charged with robbery—Investigation by District Superintendent—Complaint to Inspector-General, *A*, **38**

Sub-Magistrate, Competency of, to act under, *M*, **30.**
Subordination, of police to Magistrates—Sanction to prosecute, *A—C*, **8.**
Summary, trial of offences under S. 29, *Z*, *A* **32.**
Summons, Police officers laying information before Magistrate may apply for, S. 24, **24.**
Superintendence, of police vests in Local Government, S. 3, **7.**
Superintendent, See DISTRICT SUPERINTENDENTS.
Police administration in a district vests in District, and certain Assistant District, S. 4, **8.**
Surrender, of certificate—Effect, S. 8, **11.**
of certificate, S. 8, **11.**
Suspend, power to, police officers, S. 7, **9.**
Suspension, of Police officer—Effect, S. 8, **11.**
Police officer under, —His responsibilities, *Y*, **12.**
Police officers under,—Applicability of S. 29, *L*, **27.**
of music, *I*, **33.**
Swine, included in cattle, S. 1, **6.**

T

Tanbans, Placing, in thoroughfare, *P*, **36.**
Tank, Neglect to fence, S. 34, **36.**
Bathing in, S. 34, **36.**
Tender, of amends—Effect on actions under the Act, S. 42, **40.**
Thoroughfare, scope of the word in, S. 30, *H*, **33.**
Duty of police to keep order in, S. 31, **34.**
Committing certain offences on, etc., S. 34, **35.**
Conducting assemblies and processions in, S. 30, **32.**
Torturing, animals, S. 34, **35.**
Town, includes cantonment, *O*, **36.**
Training, horse or other cattle on road, etc., S. 34, **35.**
Transfer, to District Superintendent the authority of Magistrate, *W*, **44.**
Trial, Summary, of offences under S. 29, *Z*, *A*, **32.**

U

Unclaimed property, Disposal of, property, S. 25, **24.**
Police officers to take charge of, S. 25, **24.**
Timber washed on one's estate by a river not, *Z*, **24.**
Magistrate may detain, and issue proclamation, S. 26, **24.**
Sale proceeds of, shall be at the disposal of Government, S. 27, **25.**
Confiscation of property if no claimant appears, S. 27, **25.**
Unenrolled, border police force—Applicability of, S. 20, *R*, **22.**
Unlawful assembly, Injury by inhabitants arising from, S. 15-A, **17.**
Reasonable apprehension of, necessary for appointment of special police officer, S. 17, **18.**
Procession or assembly when becomes, S. 30-A, **33.**
Unloading, keeping on road, etc., conveyance for, S. 34, **35.**

V

Valuable security, is property, S. 1, **5.**

Verandah, Open, is open place, *M*, **36.**

Village police, Authority of District Superintendent over, S. 47, **44.**

Village police officers, Hereditary, enrolled under the Act, S. 21, **22.**

Other, enrolled under the Act, S. 21, **22.**

Hereditary, not enrolled under the Act, S. 21, **22.**

Other, not enrolled under the Act, S. 21, **22.**

not to be enrolled without their consent and the consent of those having right of nomination, S. 21, **22.**

Violation, Of duty must be intentional, *M*, *N*, **27.**

of conditions of license given to assemblies and processions, S. 30-A, **33.**

Violation of duty, under S. 29 must be intentional, *M*, *N*, **27.**

Mere rashness or negligence before ordering search is no, *O*, **27.**

indiscretion and carelessness in the conduct of inquiries, *Q*, *R*, **28.**

Neglect to act on information while on other duty, *S*, **28.**

omission to attend extra drill, *U*, **28.**

Search of man's house without sufficient grounds, *V*, **28.**

Voucher, Delivery of, no offence under S. 34, *X*, *Y*, **37**, **38.**

Vouchers, not goods, *W*, **37.**

W

Warrant, not necessary for inspecting drinking shop, etc., S. 23, **23.**

Police officers laying information before Magistrate may apply for, S. 24, **24.**

Well, Neglect to fence, S. 34, **36.**

Withdraw, power of police officer to, from his duties, S. 9, **12.**

THE LAWYER'S COMPANION SERIES.

THE OPIUM ACT, 1878

(ACT I OF 1878)

(WITH THE CASE-LAW THEREON)

BY

T. V. SANJIVA ROW,

FIRST GRADE PLEADER, TRICHINOPOLY.

(AUTHOR OF A "DIGEST OF PRIVY COUNCIL RULINGS,"
THE "CURRENT INDEX OF INDIAN CASES,"
THE "LAWYER'S REFERENCE,"
AND
THE "INDIAN EVIDENCE ACT.")

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TABLE OF CASES NOTED IN THIS ACT.

		PAGE
	I. L. R. Allahabad Series.	
15 A 129 ...	Queen-Empress v. Sangam Lal ...	12
15 A 192 (**F.B.**) ...	Ganeshi, *In re* ...	16
19 A 465 ...	Queen-Empress v. Schade ...	15
	I. L. R. Bombay Series.	
19 B 626 ...	Raghunath Lalman v. Nathu Hirji Bhate ...	7
	I. L. R. Calcutta Series.	
24 C 691 (696) ...	Bahabal Shah v. Tarak Nath Chowdhry ...	15, 16
26 C 571 ...	Umesh Chunder Ghosh v. Queen-Empress ...	15
32 C 557 ...	Kashi Nath Bania v. Emperor ...	11
36 C 1016 ...	Ashruf Ali v. Emperor ...	11
	I. L. R. Madras Series.	
13 M 191 ...	Queen-Empress v. Ramanujam ...	6
	The Allahabad Law Journal.	
1 A L J 245 (247) ...	Mohammad Yasin v. King-Emperor ...	15
5 A L J 357 ...	Janki Das v. King-Emperor ...	16
	The Allahabad Weekly Notes.	
4 A W N 213 ...	Empress v. Ganeshi ...	10, 23
21 A W N 117 ...	King-Emperor v. Chote Lal ...	10
A W N 1902 (17) ..	——— v. Bakir ...	14
(1908) A W N 95 ...	Janki Das v. King-Emperor ...	16
	The Bombay High Court Reports.	
3 B H C R Cr 50 ...	Reg v. Gania Bin Bapu ...	15
3 B H C R (Cr) 59...	—— v. Remedios ...	16
7 B H C R (Cr) 39...	—— v. Showdar Ghenar *et al* ...	16
7 B H C R (Cr) 59...	—— v. Hira Jiva ...	15
8 B H C R (Cr) 118 ...	—— v. Lakhu Sakru ...	15
9 B H C R 166 ...	—— v. Sadu Dadabhai ...	15
9 B H C R 343 ...	—— v. Narayan Gangaram ...	15
	Ratanlal's Unreported Criminal Cases.	
Rat Unrep Cr Cas 287 ...	Queen-Empress v. Lalu Khemchand ...	11
Rat Unrep Cr Cas 297 ...	——— v. Jetha Lal ...	14
Rat Unrep Cr Cas 332 ...	——— v. Mahomad ...	7, 14
Rat Unrep Cr Cas 676 ...	——— v. Kaglo ...	7, 10
Rat Unrep Cr Cas 860 ...	——— v. Datter Bin Bala ...	14

				PAGE
		The Calcutta Weekly Notes.		
8 C W N 365	...	Umesh Chunder Ghosh v. Queen-Empress	...	15
8 C W N 349	...	Chedi Mala v. The King-Emperor	...	12, 17, 18
9 C W N 719	...	Kasi Nath Bania v. The Emperor	...	11
		The Bengal Law Reports.		
8 B L R (Ap) 7	...	Queen v. Ramdyal Singh	...	20
		The Calcutta Law Reports.		
11 C L R 464	...	Bhoobun Chundur Shaw, *In re*	...	14
13 C L R 336	...	R. Davis v. Koylas Chunder Ghose	...	6, 14
		Sutherland's Weekly Reporter.		
8 W R (Cr) 4	...	Queen v. Ram Kishen	...	16
16 W R (Cr) 55 (65)	...	The Queen v. Ramdyal Singh	...	20
16 W R (Cr) 59	...	Ramdass, *In re*	...	14
20 W R 54 (Cr)	...	The Queen v. Gunesh Mana	...	12
22 W R (Cr) 31	...	The Queen v. Khetter Nath Shaha	...	5
22 W R (Cr) 43	...	Khetter Mohun Chowrunghee, *In re*	...	16
23 W R (Cr) 33	...	The Queen v. Jodoonath Shaha	...	16
		Weir's Criminal Rulings.		
1 Weir 831	...	Tangadu Maruo Patro, *In re*	...	16
1 Weir 832	...	Pelluri Ramayya, *In re*	...	10
1 Weir 832	...	Rangan Chetti, *In re*	...	17
1 Weir 833	...	Sarwarkhan, *In re*	...	13
1 Weir 835	...	Ramanna, *In re*	...	18
		The Punjab Record.		
7 P R 1875 (Cr)	...	Amir Baksh v. The Crown	...	8
30 P R (1880) Cr	...	The Empress v. Sher Singh	...	21
9 P R (1881) (Cr)	...	Empress v. Mussamat Piran-ditti	...	10
16 P R 1883 (Cr)	...	Gurdit Singh v. Empress	...	8
4 P R 1884 (Cr)	...	Shamkar v. Empress	...	10, 11
12 P R (1884) (Cr)	..	Chanda Singh v. Empress	...	8
13 P R 1884 (Cr)	...	Megha v. Empress	...	6, 13
46 P R (1885) Cr	...	Sochet Singh v. Empress	...	8
8 P R (1887) Cr	...	Empress v. Bhola Lal	...	17
40 P R 1887 (Cr)	...	Bakhu Ram v. Empress	...	13
10 P R 1888 (Cr)	...	Maja Singh v. Empress	...	15
19 P R 1890 (Cr)	...	Atma Singh v. Empress	...	13
22 P R 1890 (Cr)	...	Nabi Baksh v. Empress	...	11
19 P R 1891 (Cr)	...	Mahmud v. Queen-Empress	...	15
10 P R 1893 (Cr)	...	Bur Singh v. Queen-Empress	...	15
13 P R 1894 (Cr)	...	Queen-Empress v. Ganpat	...	19
13 P R 1897 (Cr)	...	Empress v. Salaru	...	12
31 P R 1902 (Cr)	...	Crown v. Sadik	...	12
34 P R (1905) Cr	...	King-Emperor v. Buta Singh	...	12
11 P R (1906) Cr	...	Crown v. Nabu	...	21
		The Punjab Law Reporter.		
105 P L R (1904)	...	The Crown v. Allah Baksh	...	21
113 P L R 1906	...	———— v. Chhail Bihari	...	16
118 P L R (1907)	...	——— v. Nabu	...	21

			PAGE
		The Oudh Cases.	
2 O C 99 (101)	...	Ganeshi v. The Crown ...	12
		Upper Burma Rulings.	
U B R (1897-1901), 127 (130)	...	Queen-Empress v. Nga Aung Gyi ...	16
		Lower Burma Rulings.	
3 L B R 229	...	Ah Shee v. King-Emperor ...	21
4 L B R 121	...	Mi Hauk v. King-Emperor ...	21
4 L B R 132	...	King-Emperor v. On Bu ...	11
4 L B R 314	...	———— v. Paw Yan ...	17
4 L B R 315	...	———— v. Thaw Byaw ...	13
5 L B R 56	...	———— v. Nawzu ...	20, 22
		The Sind Law Reporter.	
1 S L R (Cr.) 70	...	Emperor v. Velji Lakhamsi ...	7, 8, 14
		The Indian Cases.	
2 Ind Cas 546	...	Emperor v. Nawzu ...	20, 22
4 Ind Cas 699	...	Ashraf Ali v. Emperor ...	
		The Criminal Law Journal.	
2 Cr L J 417	...	Kasinath Bania v. Emperor ...	11
4 Cr L J 178	...	Chhail Behari v. Emperor ...	16
4 Cr L J 290 (291)	...	Emperor v. Nabu ...	21
7 Cr L J 87	...	Mi Hauk v. Emperor ...	21
7 Cr L J 393	...	Emperor v. Janki Das ...	16
7 Cr L J 410	...	Emperor v. On Bu ...	11
8 Cr L J 188	...	Emperor v. Velji Lakhamsi ...	7, 8, 14
9 Cr L J 14	...	Emperor v. Paw Yan ...	17
9 Cr L J 15 (F.B.)	...	Emperor v. Tha Byaw ...	13
11 Cr L J 29	...	Ashraf Ali v. Emperor ...	11

THE OPIUM ACT, 1878.

CONTENTS.

PREAMBLE.

SECTIONS.

1. Short title.
   Local extent.
   Commencement.
2. [*Repealed.*]
3. Interpretation-clause.
4. Prohibition of poppy cultivation and possession, etc., of opium.
5. Power to make rules to permit such matters.
6. Duty on opium imported by land.
7. Warehousing opium.
8. Power to make rules relating to warehouses.
9. Penalty for illegal cultivation of poppy, etc.
10. Presumption in prosecutions under section 9.
11. Confiscation of opium.
12. Order of confiscation by whom to be made.
13. Power to make rules regarding disposal of things confiscated, and rewards.
14. Power to enter, arrest and seize, on information that opium is unlawfully kept in any enclosed place.
15. Power to seize opium in open places.
    Power to detain, search and arrest.
16. Searches how made.
17. Officers to assist each other.
18. Vexatious entries, searches, seizures and arrests.
19. Issue of warrants.
20. Disposal of person arrested or thing seized.
21. Report of arrests and seizures.
22. Procedure in case of illegal poppy cultivation.
23. Recovery of arrears of fees, duties, etc.
24. Farmer may apply to Collector or other officer to recover amount due to him by licensee.
25. Recovery of penalties due under bond.

SCHEDULE. [*Repealed.*]

THE OPIUM ACT, 1878.

ACT No. I OF 1878.

[*9th January, 1878.*]

An Act to amend the law relating to Opium.

WHEREAS it is expedient to amend the law relating to opium; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Opium Act, 1878.

Local Extent.

It shall extend to such local areas as the Governor-General in Council may, by notification in the Gazette of India, from time to time direct;

Commencement.

And it shall come into force in each of such areas on such day as the Governor General in Council in like manner directs in this behalf.

(Notes).

General.

Act XXI of 1856 (Opium) was not repealed so far as Bengal was concerned by Act X of 1871. 22 W.R. (Cr.) 3.

2. [*Repeal and amendment of enactments.*] *Rep. by the Repealing and Amending Act, 1891 (XII of 1891), and the Repealing and Amending Act, 1894 (IV of 1894).*

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

"Opium" includes also poppy-heads, preparations or admixtures of opium, and intoxicating drugs prepared from the poppy [1]:

"Magistrate" means, in the Presidency-towns, a Presidency Magistrate, and elsewhere, a Magistrate of the first class or (when specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class:

"import" means to bring into the territories administered by any Local Government from sea, or from foreign territory, or from a territory administered by any other Local Government:

"export" means to take out of the territories administered by any Local Government to sea, or to any foreign territory, or to any territory administered by another Local Government:

"transport" means to remove from one place to another within the territories administered by the same Local Government [2].

(Notes).

1.—"Opium....poppy."

***Muddut*—Sale of.**

The definition of Opium in the Act includes *Muddut*. Hence the sale of *Muddut* is regulated by the provisions of this Act. 13 C.L.R. 336. **A**

2.—"Transport....Local Government."

Transport of opium from one district to another.

Taking opium from one district to another, amounts to transporting opium within the meaning of this section. 13 P.R. 1884 (Cr.). **B**

Prohibition of poppy cultivation and possession, etc., of opium.

4. Except as permitted by this Act, or by any other enactment relating to opium for the time being in force, or by rules framed under this Act or under any such enactment, no one shall—

(*a*) cultivate the poppy;

(*b*) manufacture opium;

(*c*) possess opium;

(*d*) transport opium [1];

(*e*) import or export opium; or

(*f*) sell opium [2].

(Notes).

1.—"Transport opium."

Transport of opium—Rules regulating—(Madras).

(*a*) The section absolutely prohibits the transport of opium except in the manner prescribed by the Act, and the only provisions under the Act allowing transport are contained in rules VIII to XIII (Madras) which only apply to licensed importers, farmers and licensed vendors. 13 M. 191. **C**

(*b*) Where the accused who held a license in Madras for the possession of opium as a Medical Practitioner to the extent of one seer or 8 pollums, sent his servant to purchase 4 pollums of opium from a licensed vendor at S., a place in Chingleput District, and the servant having bought the opium brought it to Madras, *held* that the accused clearly transported opium from S. to Madras within the meaning of the Act, and as the license held by him did not expressly or impliedly authorize such transport, the transport was illegal. 13 M. 191. **D**

Quære—Whether if the accused had carried the opium himself, the license to possess the opium would necessarily imply a right to transport it with him and so override the prohibition of transport. (*Ibid.*). **E**

2.—"Sell opium."

Sub-lease, in contravention of rules not enforcible.

Where the plaintiff who had the right to retail opium in certain shops agreed to sublet his right to manage certain shops to the defendant, in contravention of the rules made under the Act, *held* that the agreement was void and that he could not recover from the defendant the balance due to him under it, and that he could not further, recover the price of opium supplied to the defendant, as advances made for an illegal purpose subsequently carried out, could not be recovered. 19 B. 626. following *Collins* v. *Blantern* (Smith's Leading cases Vol. I, p. 399).F

Power to make rules to permit such matters.

5. The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification in the Local Gazette, make rules [1] consistent with this Act, to permit absolutely, or subject to the payment of duty or to any other conditions, and to regulate, within the whole or any specified part of the territories administered by such Government, all or any of the following maters :—

(*a*) the cultivation of the poppy [2] ;

(*b*) the manufacture of opium ;

(*c*) the possession of opium ;

(*d*) the transport of opium ;

(*e*) the importation or exportation of opium ; and

(*f*) the sale of opium, and the farm of duties leviable on the sale of opium by retail [3] :

Provided that no duty shall be levied under any such rule on any opium imported and on which a duty is imposed by or under the law relating to sea-customs for the time being in force or under section 6.

(Notes).

1.—"The Local Government....rules."

(1) **Rules framed by Government, to be permissive.**

S. 4, provides that except as permitted by the Act or rules, no one may manufacture &c., opium at all. S. 9 provides a punishment to manufacture contrary to the Act or rules. Under these circumstances, the rules must be in a permissive, and not a negative form, as it would be very inconvenient to spell out an implied permission from the absence of prohibition—the General prohibition being already contained in the law. Rat Un. Cr. Cas. 676. G

(2) **Rule-making power of Local Government not to be delegated.**

(*a*) The rule-making power is a power delegated by the Government of India to the Local Government, and the Local Government cannot delegate it to any other, for *delegata potestas non potest deligare*. 1 S. L. R. (Cr.) 70=8 Cr. L. J. 188. See also Rat. Un. Cr. Cas. 332. H

1.—"The Local Government....rules"—(Concluded).

(*b*) Thus where the rules framed by the Local Government for retailing opium required licenses to be obtained from the Collector but enacted that such licenses "shall be in the form E, hereto annexed, or in such other form as the Commissioner from time to time prescribes," *held* that words "or in such other form prescribes" were *ultra vires*, and that a breach of the conditions of the Commissioner's license was not an offence under the Act. 1 S. L. R. 70 (Cr.) = 8 Cr. L.J. 188. **I**

(3) **'Opium', meaning of, in rules framed by Local Government.**

(*a*) The Local Government in framing rules under the section may use the term 'opium' in a more restricted sense than the meaning given to it in the Act. 16 P.R. 1883 (Cr.). **J**

(*b*) Thus in the rules framed by the Punjab Government, the word 'opium was held not to include 'poppy heads.' (*Ibid.*) **K**

2.—"The cultivation of the poppy."

(1) **License illegally withheld by Patwari—Cultivation without license—Effect.**

Rule 21 of the rules made under S. 5 has been held inapplicable to poppy cultivators who have neither illicitly cultivated the poppy nor extracted opium, but who do not hold cultivator's licenses merely because the Patwari has failed to give them the licenses as he was required to do under the rules. 46 P.R. 1885 (Cr.) **L**

(2) **Consumption by licensed cultivator of opium lawfully possessed.**

In the Punjab, it has been held that rule No. 9 of the rules made under S 5 read with other rules, does not forbid a licensed cultivator of opium from consuming the opium of which he is lawfully possessed under his license. 12 P.R. 1884 (Cr.) *overruling* 7 P.R. 1875 (Cr.). **M**

3.—"The sale....retail."

Rules permitted under cl. (f), nature of.

Cl. (*f*) gives the Local Government power to make rules (i) to permit absolutely or subject to conditions the sale of opium, (ii) to regulate the sale of opium. 1 S.L.R. 70 (Cr) = 8 Cr. L.J. 188. **N**

Duty on opium imported by land.

6. The Governor-General in Council may, from time to time, by notification in the Gazette of India, impose such duty as he thinks fit on opium or on any kind of opium imported by land into British India or into any specified part thereof, and may alter or abolish any duty so imposed.

Warehousing opium.

7. The Governor-General in Council may, by order notified in the Gazette of India,—

(*a*) authorise any Local Government to establish warehouses, for opium legally imported into, or intended to be exported from, the territories administered by such Local Government, and

(*b*) cancel any such order.

So long as such order remains in force, the Local Government may, by notification published in the official Gazette,—

(c) declare any place to be a warehouse for all or any opium legally imported, whether before or after the payment of any duty leviable thereon, into the territories administered by such Government, or into any specified part thereof, intended to be exported thence, and

(d) cancel any such declaration.

Power to make rules relating to warehouses.

An order under clause (b) shall cancel all previous declarations under clause (c) of this section relating to places in the territories to which such order refers.

So long as such declaration remains in force, the owner of all such opium shall be bound to deposit it in such warehouse.

Power to make rules relating to warehouses.

8. The Local Government, with the previous sanction of the Governor General in Council, may, from time to time, by notification in the local Gazette, make rules consistent with this Act to regulate the safe custody of opium warehoused under section 7; the levy of fees for such warehousing; the removal of such opium for sale of exportation; and the manner in which it shall be disposed of, if any duty or fees leviable on it be not paid within twelve months from the date of warehousing the same.

Penalty for illegal cultivation of poppy, etc.

9. Any person who, in contravention of this Act, or of rules made and notified under section 5 or section 8,—

(a) cultivates the poppy, or

(b) manufactures opium [1], or

(c) possesses opium [2], or

(d) transports opium [3], or

(e) imports or exports opium, or

(f) sells opium [4], or

(g) omits to warehouse opium, or removes or does any act in respect of warehoused opium,

and any person who otherwise contravenes any such rule [5],

shall, on conviction before a Magistrate, be punished for each such offence with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both; [6]

and, where a fine is imposed, the convicting Magistrate shall direct the offender to be imprisoned in default of payment of the fine for a term which may extend to six months, and such imprisonment shall be in excess of any other imprisonment to which he may have been sentenced.

(Notes).

1.—"Manufactures opium."

(1) **Illegal manufacture of "chandu."**

A person illegally manufacturing or preparing *chandu* is with reference to Ss. 3 and 9, guilty of an offence under S. 9. 4 A.W.N. 213. **O**

(2) **Manufacture of *chandu* for domestic use, out of opium legally purchased.**

Rules 3 and 4 (1) (Bombay) read together permit the manufacture of chandu, by a purchaser of opium from a licensed vendor, for his (purchaser's) own domestic use. Rat. Unr. Cr. Cas. 676. **P**

N.B.—In 9 P.R. (1881) (Cr.), it was held the conversion of opium into another form of intoxicating drug called *chandu*, was not manufacture of opium within the meaning of this section.

2.—"Possesses opium."

(1) **Illegal possession of opium, abetment of.**

An abetment of the possession of opium in contravention of the Act, or the rules framed thereunder would be an "offence" as defined in S. 40, I.P.C. 4 P.R. 1884 (Cr.). **Q**

(2) **Smoking in a *chandu* den, whether evidence of abetment of illegal possession of opium by the master of the den.**

The mere presence of a person in a *chandu* den where several persons were smoking *chandu* or even the fact of his being found smoking there, cannot warrant his conviction for abetment of the offence on the part of the master of the establishment, of possessing *chandu* to a larger amount than that allowed by law. 21 A.W N. 117. **R**

(3) **Possession under cl (c), nature of.**

The possession intended by cl. (*c*) S. 9 is criminal or guilty possession. S. C. 236, *following* S. C. 161. **S**

(4) **Custody on behalf of another, not equivalent to possession.**

Where one B, a licensed opium vendor was in the habit of daily, when he went home, putting the opium with the books and license in a box, which he locked himself, and of which he kept the keys, and making over the box to one G, a neighbour and shop-keeper, for safe custody during the night, *held*, that such custody did not amount to possession by G, of the opium locked up in the box, so as to render him guilty (under S. 9) of having opium in his possession, in contravention of the Opium Act and the rules made thereunder. 25 A. 262. **T**

(5) **Illegal possession of opium—Defence of proprietary right of others whether valid.**

Any possession of opium beyond the prescribed quantity is an offence under the Act and the rules, without reference to any question as to any alleged proprietary right of another to any portion of it. (1 Weir, 832)

N.B.—It cannot be said that when possession is on behalf of another it is not possession within the meaning of the Act and the rules. 1 Weir, 832. **U**

2.—"Possesses opium"—(Continued).

(6) **Possession of prescribed quantity with a mere intention to sell, not an offence.**

A person who kept 2⅝ tolas of opium in his possession with an intention to sell the same was held not to have contravened any rule under the Act. Rat. Un. Cr. Cas. 287. **Y**

(7) **Illegal possession of Opium.**

(*a*) Where S. who was employed by 3 licensed cultivators was given for his trouble one-fourth of the quantity of juice extracted from the poppy-heads, and was found in possession of more opium than he might lawfully possess under the Act, S. was held guilty of illegal possession of opium under this section. 4 P.R. 1884 (Cr.). **W**

N.B.—But as it appeared that the cultivators were independent of each other, and there was nothing to show what quantity of poppy-heads each of them made over to S, it could not be said that any of them abetted him in possessing more opium than he might lawfully possess. (*Ibid.*)

N.B.—Nor could they be held guilty of having sold opium to S, under S. 9, as there was no sale of opium by them to S. (*Ibid.*)

(*b*) Where one of the rules framed under the Act prohibited the possession of more than 3 tolas of opium *or* other intoxicating drug, *held* the word *or* must not be interpreted as equivalent to *and*, so as to permit the possession of 3 tolas of opium and 3 tolas of *chandu*, or 6 tolas in the aggregate. 22 P.R. 1890, (Cr). **X**

(8) **Opium includes *Beinchi*.**

Beinchi (or *pyaungchi*) is now included in the definition of opium in rule I of the rules (Burma) under the Act. A registered consumer may possess *beinchi* provided that the total weight of opium including *beinchi* in his possession does not exceed 3 tolas. The ruling in *Queen-Empress* v. *Paw Gule* (L.B.R. 617) is no longer applicable. 4 L.B.R. 132 =7 Cr.L.J. 410. **Y**

(9) **Possession of railway receipt, whether equivalent to possession of opium.**

(*a*) Possession by a person of a Railway receipt for a parcel containing opium, addressed to him, amounts to possession of the opium within the meaning of S. 9, if it is shown that he was aware of the contents of the parcel and that it was sent to him with his full knowledge. 32 C. 557=9 C.W.N. 719=2 Cr. L. J. 417. **Z**

(*b*) But mere possession of the railway receipt would not in all cases amount to possession of the opium. It might be shown that the person in whose possession it was found had no knowledge of the contents of the parcel, or that the receipt had been "planted" by some one with a view to get him into trouble, or that he was a mere tool in the hands of others. In such cases the possession of the receipt is not equivalent to possession of opium. 32 C. 557=9 C.W.N. 719=2 Cr. L.J. 417. **A**

N.B.—The decision in 32 C. 557=9 C.W.N. 719, was doubted but followed in 36 C. 1016=11 Cr.L.J. 29=4 Ind. Cas. 699. In this case the judges held that the decision in 32 C. 557 overlooked the distinction between possession and right to possession, and, but for the authority of that decision, they would have been disposed to hold that possession of railway receipt would not constitute possession of opium within the meaning of the section, that the Act relates to possession of opium and not of a receipt for opium.

2.—"Possesses Opium"—(Continued).

(10) **Possession by wife or servant, when amounts to possession by husband or master.**

Where opium purchased by the wife of the accused was found in possession of his servant, *held*, the accused was not liable under S. 53 of Act XXI of 1856; it not having been shown that the purchase by the wife was authorised by the husband, her possession of the opium or that of the servant could not be considered the possession of the accused under the Act. 20 W.R. 54 (Cr.). **B**

(11) **Opium found in a joint family house—Liability of a non-managing member, when arises.**

Where proceedings under S. 9 for unlawful possession of opium are taken against a member of a joint family not being the head of such joint family, the opium being found in the common room of the joint family house, it is incumbent on the prosecution to give evidence that the opium is in the exclusive possession and control of the particular member of the joint family who is sought to be charged with its possession. 2 O. C. 99 (101). See also 15 A. 129. **C**

N.B.—Such a plea cannot be dismissed merely because it was put forward by the accused for the first time in appeal. (*Ibid.*)

N.B.—The temporary absence of the managing member is not a sufficient reason for holding that he has ceased to be the managing member or that during his absence any junior member of the family who happens to be present is necessarily officiating for the managing member and is the successor of his responsibilities. (*Ibid.*)

(12) **Opium found in a house in exclusive occupation of the accused—Presumption.**

A presumption of guilty possession of opium arises against a person, charged under cl. (*c*), from the fact that opium was found in that part of a dwelling house which is in his exclusive occupation. S.C. 236. **D**

(13) **Charge of possession of excessive quantity of opium—Defence of joint possession, how established.**

Where a person is charged under the Act with being in possession of a quantity of opium more than that allowed by law, the fact that other persons living with him in his house also consumed opium, will be of no avail, but he must strictly prove that his possession of the opium was the joint possession of himself and others, and that he held it for the use of all. (34 P.R. 1905 (Cr,); 13 P.R. 1897 (Cr.) and 37 P.R. 1902 (Cr), *F.*). **E**

(14) **Excessive opium found in a boat—Liability of master and crew.**

Where 50 tolas of opium were found in a boat, and there was nothing to show how the opium came there, or that the master or crew had any knowledge thereof, *held*, the master was liable under S. 9 and not the crew. 8 C.W.N. 349. **F**

N.B.—Though the boat may to some extent be in the possession of the crew, since they with the master control its movements, the cargo cannot be said to be in their possession, as they have no right to handle it except with the master's orders, though they were concerned in or connected with the transit thereof. 8 C.W.N. 349.

2.—"Possesses Opium"—(Concluded).

(15) **Illegal possession of opium, conviction for, on insufficient evidence.**

Where a person was convicted under this section on the only evidence that he made a statement to a Darogha that he had purchased opium from unlicensed persons, but the accused did not admit the charge, the conviction was set aside on the ground it was not ascertained that the offence was actually committed. 19 P.R. 1890 (Cr.). **G**

(16) **Cheating by false personation.**

Where a person by giving a false name and address purchased at a Government opium shop a certain quantity of opium which would not have been sold to him but for the deceit, *held* that he was guilty of cheating as defined in S. 415, I.P.C. 4 L.B.R. 315=9 Cr. L.J. 15, **F.B.** (*Irvin C.J. dissenting*). **H**

3.—"Transports opium."

(1) **Transport of opium—Who should get license (Punjab).**

(*a*) Under rule 24 of the rules framed by the Punjab Government, the obligation to get a pass to transport opium is imposed on the transporting farmer, and such pass is not to be granted by the Collector of the District of export, without the written permission of the Collector of the District of import. 40 P.R. 1887. **I**

(*b*) Where B., a licensed retail vendor of drugs in district X., instructed D., a wholesale dealer in District Y., to send to him 2 maunds of poppy-heads, and the latter after obtaining a *rowana* from the Collector of his district transported it to B., without the permission of the Collector of District X., *held* B could not be deemed to have authorised D to send the poppy-heads otherwise than in accordance with law, and the rules in force, and could not be held responsible for omission to get the permit from the Collector of his district and was not guilty of violating rule 24 framed under the Act. 40 P.R. 1887 (Cr.). **J**

(2) **Who can transport opium.**

In the Punjab, no one but a farmer, a licensed vendor or a wholesale licensed vendor, can, under the rules transport opium. 13 P.R. 1884 (Cr.) **K**

N.B.—'A licensed vendor' cannot be held to include a licensed cultivator. 13 P. R. 1884.

(3) **Taluks farmed separately—Proper authorities to grant pass to transport opium.**

(*a*) Under rule VIII of the rules of 1893 (Madras), a farmer desiring to transport opium from one taluk to another of the same district, must when the taluqs are farmed to different farmers, obtain a pass for each consignment from the officer in charge of the excise revenue of the district or from the Tashildar of the Taluq. 1 Weir, 833. **L**

(*b*) Where the taluqs of a district are separately farmed but only one person is the farmer of two of the taluqs a person transporting opium from one of the taluqs to the other with permits signed by the farmer, and being found, in the course of transporting, in a place outside both the taluqs, has transgressed the rule. 1 Weir, 833. **M**

4.—"Sells opium."

(1) **Scope of cl. (f).**

Cl. (*f*) makes it an offence to sell opium in contravention of the Act or Rules. 1 S. L. R. (Cr.) 70=8 Cr. L. J. 188. **N**

(2) **Sale by servant of licensed vendor, whether an offence.**

Where a license to sell opium granted under the Act, does not prohibit a sale by the servant of the licensee, a sale by the servant on behalf of his master, cannot properly be said to be a sale of opium without a license, and punishable under S. 9 of the Act. S. C. 285. **O**

(3) **Illegal sale by servant—Master whether liable.**

Where the servant of a licensed opium vendor sells opium after sunset, contrary to the conditions of the master's license in his master's absence, and there is no evidence to show that the master directly or otherwise authorized the illegal sale, the master is not liable to pay the penalty under S. 9. 11 C. L. R. 464. **P**

N.B.—There is no provision in the Act similar to that in Act VII (B. C.) of 1878, which provides that the penalty for certain breaches of licenses granted under that Act, shall be recoverable from the vendor notwithstanding that such breaches may have been owing to the default or carelessness of the servant or other person employed by him. (*Ibid.*)

(4) **Illegal sale of opium—Presumption of.**

Several persons were found together in a room, some of them smoking *chandu*. In the room were also found two pipes for smoking *chandu*, seven head-rests, and the usual paraphernalia of a *chandu* den. *Held* that the circumstances disclosed led up to one inference only, namely, that the *chandu* found was exposed for sale and that the persons found in the den were persons to whom it was being sold for smoking purposes. A. W. N. (1902) 17. **Q**

(5) **Sale of *muddut* under Act IV of 1866—Police Commissioner's license, need for.**

Under S. 39 of Act IV(B. C.) 1866, a license from the Commissioner of Police is necessary for the sale of *muddut*, and a person who sells *muddut* without obtaining such license would be liable to punishment under S. 35 of that Act. 13 C. L. R. 336. **R**

(6) **Act XXI of 1856, S. 50—Conviction without re-calling license, legality of.**

Before convicting a person under S. 50 of Act XXI of 1856 it was necessary according to S. 38 of that Act to prove that his license had been recalled. A person was a duly licensed vendor of opium so long as his license had not been re-called. 16 W. R. (Cr.) 59. **S**

5.—"and any person....rule."

(1) **Breach of the conditions of a license, whether an offence.**

(*a*) An infraction of a condition of a license cannot be regarded as an infraction of the rules, and punishable under S. 9. Rat. Un. Cr. Cas. 860, *following* Rat. Un. Cr. Cas. 332. But see Rat. 297, *contra*. **T**

(*b*) Where the Rules framed by the Local Government under Ss. 5 and 8, did not directly prohibit the keeping of an opium shop open after 9 p.m., but the terms of a license issued under the rules contained such a prohibition, *held* that the infraction of the terms of the license was not an offence. Rat. Un. Cr. Cas. 332. **U**

5.—"And any person....rule"—(Concluded).

(c) Similarly where a rule framed under the Act provided that a cultivator's license might be granted subject to the condition, among others, that he should enter or cause to be entered on his license the actual outturn of poppy heads, *held* the omission of a licensed cultivator to make such an entry on his license, was a breach of the condition of the license but not a contravention of the rule. 10 P.R. 1893 (Cr.). **Y**

(d) Where a licensed vendor of opium, failed to comply with one of the conditions of his license which required him to keep a correct account of the daily sale of opium, *held*, although, the license could be forfeited for breach of the condition of the license, the licensee was not guilty of an offence under S. 9. 26 C. 571 = 3 C.W.N. 332. **W**

(e) But the Allahabad High Court has held that though in Bengal the infringement of the conditions of a license renders the offender liable to cancellation of the license only, in the North Western Provinces, a person infringing the conditions specified in a license is also liable to punishment for the specific offence committed. 1 A.L.J. 245 (247). **X**

(f) Thus a person who has taken a license for the sale of opium, has been held guilty of an offence under S. 9, for allowing another person to sell it on his behalf when the salesman's name was not endorsed on the license under the rules framed by the Local Government. 1 A.L.J. 245. **Y**

6.—"Shall....both."

(1) **Charge under S. 9—Particulars of.**

A person proceeded against for an offence under the section which is triable as a warrant case, should be charged with cultivating the poppy or possessing opium as the case may be, in contravention of a rule made under S. 5, the rule contravened should also be specified, so that the accused may know precisely with what he is charged and may not be misled in his defence. 10 P.R. 1888 (Cr.); see, also, 19 P R. 1891 (Cr.). **Z**

(2) **Offences under the Act, not cognizable by Court of Sessions.**

(a) A Sessions Judge has no jurisdiction over an offence under S. 9 of this Act. The conviction under the section must be by a Magistrate. The latter is therefore not competent to commit the case to the Sessions. 19 A. 465. **A**

(b) Similarly the offence of being in illegal possession of opium under Reg. XXI of 1827, could be tried only by the District Magistrate. The Court of Sessions had no jurisdiction in the matter. 9 B. H. C. R. 343. See, also, 3 B. H. C. R. (Cr.) 150; 7 B. H. C. R. (Cr.) 59.

N.B.—But an appeal lay from the decision of the District Magistrate to the Court of Sessions 9 B. H. C. R. 166; see, also, 8 B. H. C. R. (Cr.) 118; *following* 7 B. H. C.R. (Cr.) 59. **B & C**

(3) **Offence under the section—Non-cognizable.**

An offence under the section is a non-cognizable offence, and a police-officer can neither investigate the case nor make a search in respect of it without an order of a Magistrate. 24 C. 691; see, also, 9 B.H.C.R. 343. **D**

(4) **Nature of arrest under S. 24 of Act XIII of 1857, and S. 4 (q), Cr. P. C.**

The power of arrest under S. 24 of Act XIII of 1857, is not an unqualified power of arrest, but is conditional only on the accused not giving the

6.—"Shall....both"—(Concluded).

required security. It is a power of arrest not in respect of the offence alleged against him, but only in respect of his default in giving security for his appearance before a Magistrate, whereas the power of arrest without warrant under S. 4 (2) of the Cr. P.C., is a power of arrest in respect of and on account of the offence alleged. 24 C. 691 (696). E

(5) **Liability of police officer for unauthorised search.**

An action for damages lies against a police-officer who makes an unauthorized search, though the search may have been made *bona fide*. 24 C. 691. F

(6) **Magistrate in charge of Excise and Opium administration—Competency of, to try offences under the Act.**

A Magistrate cannot be said to be personally interested within the meaning of S. 555, Cr. P. C., merely by reason of its being his duty as an officer under Government to see the law relating to the sale of opium is enforced and maintained in the part of the District of which he has charge. He is, therefore, not precluded from trying an offence under the Opium Act. 15 A. 192 (**F.B.**) ; see, also, U.B.R. (1897-1901). 127 (130) ; (1908) A.W.N. 95=7 Cr.L.J. 396=5 A.L.J. 357. G

(7) **Tender of pardon for offence under the Act, whether valid.**

An offence under the Act not being triable by a Court of Sessions, a Magistrate has no power to tender pardon in respect of the same. 3 B.H.C.R. (Cr.) 59. H

(8) **Joint trial of unlicensed vendor of opium, and the licensee who allowed the sale, legality of.**

Where C who held a license for the sale of opium allowed C B, who held no license, to sell opium, and both were tried together and convicted under S. 9, *held*, the transaction in respect of which the accused had been sentenced was one and there was no misjoinder of accused persons. 1 P.W.R. (Cr.) 3=113 P.L.R. (1906)=4 Cr. L. J. 178. I

(9) **Penalty in case of several joint offenders under Reg. XXI of 1827.**

Where several persons knowingly harbour, keep, or conceal a parcel of smuggled opium, there should be only one penalty inflicted upon all the offenders jointly, of double the value of the opium, and double the amount of duty under S. 4, Reg. XXI of 1827. 7 B.H.C.R. (Cr.) 39 ; *overruling* 1 B.H.C.R. 50. J

(10) **Servants of license-holders, liability of—Act XXI of 1856.**

Under S. 43 of Act XXI of 1856, only persons holding licenses, and not their servants, were subject to the penalties specified in the section. 8 W. R. (Cr) 4. K

(11) **Summary trial of offence under S. 53 of Act XXI of 1856—Illegal.**

Where a Magistrate tried an offence under S. 53 of Act XXI of 1856 summarily and sentenced the accused to fine or imprisonment in default, with confiscation of opium, *held* that the summary trial was illegal as the penalty of confiscation was superadded to the punishment of fine. 23 W. R. (Cr.) 33; 22 W. R. (Cr.) 43, *F*. L

(12) **Neglect to keep accounts under rules, whether punishable.**

The rules (Madras) made under the Opium Act, do not make the neglect to keep accounts an offence punishable under the Act. 1 Weir 831. M

10. In prosecutions under section 9, it shall be presumed [1], until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act.

Presumption in prosecutions under section 9.

(Notes).

General.

(1) **Scope of the section.**

The section must be read as providing that opium in respect of which it is to be presumed that the accused has committed an offence, must be in the possession of the accused, though such possession need not be to the knowledge of the accused. 8 C.W.N. 349. **N**

(2) **Meaning of the section.**

The section is a penal one and must be read plainly; the plain meaning is that if excessive opium is found in a man's possession, he is liable to be punished unless he is able to account for it satisfactorily. 8 C.W N. 349. **O**

1.—"It shall be presumed."

(1) **Charge of illegal possession—*Onus* of proving legality.**

(*a*) On a charge of illegal possession of opium, assuming that the fact of possession is proved, it is for the accused to prove that his possession is legal. 8 P.R. 1887 (Cr.); see, also, 1 Weir 832. **P**

(*b*) Rule III of the rules (Madras) framed under the Act, provides that a person may possess 3 tolas of raw opium "provided such opium has been purchased from Government, or from a farmer or licensed vendor or medical practitioner." Unless, therefore, a person in possession shows that it was purchased as provided by the rule, his possession is illegal by virtue of S. 4, and he is liable to punishment under S. 9 (*c*). (*Ibid.*)

(2) **Presumption under the section—Nature of.**

The presumption against the accused under the section is only a rebuttable presumption, and can be drawn only when possession is proved. S. C. 161, *followed* in S C. 236.

N.B.—Opium is very often maliciously placed in or upon a person's premises by an enemy who then brings down the police to the spot where the opium is found. Such finding does not prove the possession which is contemplated by the law. S. C. 161, *followed* in S. C. 236. **R**

(3) **Illegal possession—Inference of, not justified by facts.**

Where the accused who was entitled to possess 3 tolas of Government opium brought from Government or a licensed vendor, was found in possession of three tolas of opium on a certain day, and it was proved from the consumption list that he had purchased three tolas 5 days previously and the Magistrate convicted the accused on the presumption that he must have consumed ½ tola a day, and could not have therefore been in possession of the three tolas purchased from Government, the defence being that the accused had borrowed opium from his friends so that he had not consumed the opium bought from the Government, *held*, that the inference drawn by the Magistrate was not justified, and the conviction was set aside. 4 L.B.R. 314=9 Cr. L.J. 14. **S**

1.—"It shall be presumed"—(Concluded).

(4) **Common carriers not exempted from the provisions of the section.**

S 10, contains no reservation in favour of common carriers, and a common carrier is not exempted from the provisions of such an enactment which is of a character that is exceptional, but by no means uncommon. 8 C.W.N. 349. T

N.B.—One of the objects of such enactments is to induce persons like carriers, *e.g.*, vendors of easily adulterated or dangerous goods, to exercise special vigilance in carrying on their business, and this would apply to a common carrier as to a carrier under a special contract. 8 C. W. N. 349.

Confiscation of opium.

11. In any case in which an offence under section 9 has been committed,—

(*a*) the poppy so cultivated,

(*b*) the opium in respect of which any offence under the same section has been committed,

(*c*) where in the case of an offence under clause (*d*) or (*e*) of the same section, the offender is transporting, importing or exporting any opium exceeding the quantity (if any) which he is permitted to transport, import or export, as the case may be, the whole of the opium which he is transporting, importing or exporting,

(*d*) where, in the case of an offence under clause (*f*) of the same section, the offender has in his possession any opium other than the opium in respect of which the offence has been committed, the whole of such other opium,

shall be liable to confiscation [1].

The vessels, packages and coverings in which any opium liable to confiscation under this section is found, and the other contents (if any) of the vessel or package in which such opium may be concealed and the animals and conveyances used in carrying it, shall likewise be liable to confiscation [2].

(Notes).

1.—"Shall be liable to confiscation."

Order of confiscation, not appealable.

No appeal lies against an order of confiscation passed under this section. 1 Weir 835. U

2.—"The animals....confiscation."

Confiscation of hired conveyance—Proof necessary for.

Where a bag containing opium is illegally transported by the accused in a hired cart, the cart is not liable to confiscation unless it can be shown that the carter knew that the accused's bag contained opium, and that the accused had no right to transport it. 1 Weir 835. V

Order of confiscation by whom to be made.

12. When the offender is convicted, or when the person charged with an offence in respect of any opium is acquitted, but the Magistrate decides that the opium is liable to confiscation, such confiscation may be ordered by the Magistrate.

Whenever confiscation is authorized by this Act, the officer ordering it may give the owner of the thing liable to be confiscated an option to pay, in lieu of confiscation, such fine as the officer thinks fit.

When an offence against this Act has been committed, but the offender is not known or cannot be found, or when opium not in the possession of any person cannot be satisfactorily accounted for, the case shall be enquired into and determined by the Collector of the district or Deputy Commissioner, or by any other officer authorized by the Local Government in this behalf, either personally or in right of his office, who may order such confiscation: Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons (if any) claiming any right thereto, and the evidence (if any) which they produce in support of their claims.

Power to make rules regarding disposal of things confiscated, and rewards.

13. The Local Government may, with the previous sanction of the Governor-General in Council, from time to time, by notification in the local Gazette, make rules consistent with this Act to regulate—

(*a*) the disposal of all things confiscated under this Act; and

(*b*) the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act [1].

(Notes).

1.—"The rewards....Act."

(1) **Scope of the section.**

The section does not authorise the Local Government to frame rules empowering Magistrates to award compensation out of fines, to persons concerned in the detection of crimes. 13 P.R. 1894 (Cr.). **W**

(2) **Distribution of penalties under Act XIII of 1856—Right of appeal to the High Court.**

Fines and penalties levied on persons convicted under Ss. 19, 20 and 21 of Act XIII of 1856, were to be distributed one half to the officers who

1.—"The rewards....Act"—(Concluded).

apprehended the offender, and the other half to the informers. The Magistrate was not bound to declare in his judgment how the fine should be disposed of. It was his duty to adjudge the fine, and as a necessary consequence of the adjudication, the penalties realized went to the parties indicated by the Act. The distribution of the penalty was therefore, not a matter over which the High Court could exercise control under S. 404 of the Cr. P.C. (1861). 16 W.R. (Cr.) 55 (65).

Quere.—Whether a person who does not come forward as an informer, and take the responsibilities together with the possible profits of his information, is entitled to any part of the penalties recovered? 16 W.R. (Cr.) 55 (65) = 8 B.L.R. (Ap.) 7. **X**

Power to enter, arrest and seize, on information that opium is unlawfully kept in any enclosed place.

14. Any officer of any of the departments of Excise, Police, Customs, Salt, Opium or Revenue superior in rank to a peon or constable, who may in right of his office be authorized by the Local Government in this behalf, and who has reason to believe, from personal knowledge or from information given by any person and taken down in writing, that opium liable to confiscation under this Act is manufactured, kept or concealed in any building, vessel or enclosed place, may, between sunrise and sunset,—

(*a*) enter into any such building, vessel or place[1] ;

(*b*) in case of resistance, break open any door and remove any other obstacle to such entry ;

(*c*) seize such opium and all materials used in the manufacture thereof, and any other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium ; and

(*d*) detain and search, and if he think proper, arrest, any person whom he has reason to believe to be guilty of any offence relating to such opium under this or any other law for the time being in force.

(Notes).

1.—"Any officer....place."

(1) Search by Excise officer, when justified.

(*a*) An entry by an Excise officer into a building, vessel, or enclosed space, to be justifiable, must be authorized under either S. 14 or S. 19. 5 L.B.R. 56 = 10 Cr. L.J. 85 = 2 Ind. Cas. 546. **Y**

1.—"Any officer....place"—(Concluded).

(*b*) An Excise peon has no authority to enter the house of a person, for seeing whether *chandu* is being manufactured there. This power is given by S. 4. to officers of the Excise Department superior in rank to a peon who may be so authorized by the Local Government. 105 P.L.R. (1904). **Z**

(2) **Search to be conducted in the presence of respectable witnesses.**

Where searches are undertaken under the provisions of this Act, neighbours or respectable house-owners near to the house searched, should be called in to witness the search. 4 L.B.R. 121=7 Cr. L.J. 87. **A**

(3) **Searches under Excise Act and Opium Act, distinguished.**

Searches under the Excise Act, should be conducted in the manner described in S. 38 of that Act, and not according to the provisions of the Cr. P.C. But searches under Ss. 14 and 15 of the Opium Act shall be made in accordance with the provisions of the Cr. P.C. (See S. 16, *infra*). 4 L.B.R. 121=7 Cr. L.J. 87. **B**

(4) **Conviction on discovery consequent on illegal search—Legality of.**

(*a*) The Act contains no provision that a conviction cannot be based on a discovery consequent on an illegal search. Whether a man is or is not in possession of a quantity of opium in excess of that prescribed by the rules framed under the Act is a question of fact, and if the fact is established, it is immaterial for the purposes of a conviction, how the discovery was made. The person making the search may be punished and may be liable in damages. 11 P.R. (1906) (Cr.) =118 P.L.R. (1907)=4 Cr. L.J. 290; 30 P. R. (1880) (Cr.), *F.* See, also, 4 L.B.R 121=7 Cr. L. J. 87, *distinguishing* 3 L.B.R. 229. **C**

(*b*) Where the house of a person suspected to be in illegal possession of opium was searched at midnight contrary to the provisoins of S. 14, *held*, that the illegality of the search did not affect the admissibility of the discovery made thereby, and that a conviction based on the discovery consequent on the illegal search was not, on that ground, illegal. 11 P.R. (1906) (Cr.)=4 Cr. L J. 291. **D**

(*c*) Similarly where a search is conducted in the presence of witnesses not contemplated by the Act, this would not prevent a conviction for illegal possession of opium, where such illegal possession is nevertheless proved. 4 L.B.R. 121=7 Cr. L. J. 87. **E**

(*d*) But in *Government* v. *Dhunnoo and others*, (All. Bk. Cir. 3 of 1872), a conviction for illegal possession of opium was quashed that the house of the accused was not searched in accordance with law. **F**

Power to seize opium in open places.

15. Any officer of any of the said departments [1] may—

(*a*) seize, in any open place or in transit [2], any opium or other thing which he has reason to believe to be liable to confiscation under section 11 or any other law for the time being in force relating to opium;

(*b*) detain and search any person whom he has reason to believe to be guilty of any offence against this or any other such law, and, if such person has opium in his possession, arrest him and any other persons in his company.

Power to detain, search and arrest.

(Notes).

1.—"Any officer....departments."

Persons authorized to seize opium.

The section applies to and authorizes *all* officers including peons and constables of the Excise and other departments mentioned in S. 14 to seize, in any open place or in transit, any opium which one of such officers has reason to believe to be liable to confiscation. 5 L.B.R. 56=10 Cr. L.J. 85=2 Ind. Cas. 516. **G**

2.—"In any open place or in transit."

(1) **Opium carried in a boat temporarily anchored, in transit.**

Opium which is being carried about from place to place in a boat is "in transit" although the boat may be temporarily anchored or otherwise fastened, so that if an officer who has entered on a boat lawfully sees opium in it, he may seize it if he has reason to believe that it is liable to confiscation. 5 L.B.R. 56=10 Cr. L.J. 85=2 Ind. Cas. 546. **H**

(2) **Search without warrant, when justified.**

The section does not authorize an officer to enter a boat without the permission of the person in charge of it. In order to justify entry and search of a boat between sunset and sunrise against the will of the person in charge or without his permission, an officer must obtain a warrant from another officer who must be authorized under S. 19. 5 L.B.R. 56=10 Cr.L.J. 85=2 Ind. Cas. 516. **I**

16. All searches under section 14 or section 15 shall be made in accordance with the provisions of the Code of Criminal Procedure.

Searches how made.

17. The officers of the several departments mentioned in section 14 shall, upon notice given or request made, be legally bound to assist each other in carrying out the provisions of this Act.

Officers to assist each other.

18. Any officer of any of the said departments who, without reasonable ground of suspicion, enters or searches, or causes to be entered or searched, any building, vessel or place,

Vexatious entries, searches, seizures and arrests.

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for any opium or other thing liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches or arrests any person,

shall, for every such offence, be punished with fine not exceeding five hundred rupees.

Issue of warrants.

19. The Collector of the district, Deputy Commissioner or other officer authorized by the Local Government in this behalf, either personally or in right of his office, or a Magistrate, may issue his warrant [1] for the arrest of any person whom he has reason to believe to have committed an offence relating to opium, or for the search, whether by day or night, of any building or vessel or place in which he has reason to believe opium liable to confiscation to be kept or concealed.

All warrants issued under this section shall be executed in accordance with the provisions of the Code of Criminal Procedure.

(Note).

1.—"A Magistrate, may issue his warrant."

Search by Magistrate competent to issue search warrant, legality of.

A Magistrate competent to issue a search warrant has, on the analogy of S 65, Cr. P.C., been held to have power himself to search. 4 A.W.N. 213. **J**

Disposal of person arrested or thing seized.

20. Every person arrested, and thing seized, under section 14 or section 15, shall be forwarded without delay to the officer in charge of the nearest police-station; and every person arrested and thing seized under section 19 shall be forwarded without delay to the officer by whom the warrant was issued.

Every officer to whom any person or thing is forwarded under this section shall, with all convenient despatch, take such measures as may be necessary for the disposal according to law of such person or thing.

Report of arrests and seizures.

21. Whenever any officer makes any arrest or seizure under this Act, he shall, within forty-eight hours next after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate official superior.

Procedure in case of illegal poppy cultivation.

22. In the case of alleged illegal cultivation of the poppy, the crop shall not be removed, but shall, pending the disposal of the case, be attached by an officer superior in rank to a peon or constable, who may in right of his office be authorized by the Local Government in

this behalf; and such officer shall require the cultivator to give bail in a reasonable amount (to be fixed by such officer) for his appearance before the Magistrate by whom the case is to be disposed of, and such cultivator shall not be arrested unless within a reasonable time he fails to give such bail:

Provided that, wherever Act No. XIII of 1857 (*An Act to consolidate and amend the law relating to the cultivation of the Poppy and the manufacture of Opium in the Presidency of Fort William in Bengal*) or any part thereof, is in force, nothing in this section shall apply to such cultivation.

Recovery of arrears of fees, duties, etc.

23. Any arrear of any fee or duty imposed under this Act or any rule made hereunder,

and any arrear due from any farmer of opium-revenue,

may be recovered from the person primarily liable to pay the same to the Government or from his surety (if any) as if it were an arrear of land-revenue.

Farmer may apply to Collector or other officer to recover amount due to him by licensee.

24. When any amount is due to a farmer of opium-revenue from his licensee, in respect of a license, such farmer may make an application to the Collector of the district, Deputy Commissioner or other officer authorized by the Local Government in this behalf, praying such officer to recover such amount on behalf of the applicant; and on receiving such application, such Collector, Deputy Commissioner or other officer may in his discretion recover such amount as if it were an arrear of land-revenue, and shall pay any amount so recovered to the applicant:

Provided that the execution of any process issued by such Collector, [Deputy Commissioner] or other officer for the recovery of such amount shall be stayed if the licensee institutes a suit in the Civil Court to try the demand of the farmer, and furnishes security to the satisfaction of such officer for the payment of the amount which such Court may adjudge to be due from him to such farmer:

Provided also that nothing contained in this section or done thereunder shall affect the right of any farmer of opium-revenue to recover by suit in the Civil Court or otherwise any amount due to him from such licensee.

Recovery of penalties due under bond.

25. When any person, in compliance with any rule made hereunder, gives a bond for the performance of any duty or act, such duty or act shall be deemed to be a public duty, or an act in which the public are interested, as the case may be, within the meaning of the Indian Contract Act, 1872, section 74; and, upon breach of the condition of such bond by him, the whole sum named therein as the amount to be paid in case of such breach may be recovered from him as if it were an arrear of land-revenue. IX of 1872.

SCHEDULE.

[ENACTMENT REPEALED.]

Repealed by Act XII of 1891.

THE OPIUM ACT, 1878.

INDEX.

Note. 1.—The thick figures at the end of each line refer to the pages of this volume and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S. in Brevier Roman denotes the section.

A

Abetment, of illegal possession of opium, *Q*, **10**.

Smoking in a chandu den whether evidence of, by master of den, *R*, **10**.

Act, commencement of, S. 1, **5**.

Extension of, S. 1, **5**.

Short title of, S. 1, **5**.

Act XIII of 1856, distribution of penalties under--Appeal, *X*, **19**, **20**.

ActXXI of 1856, S. 43--Liability of servants of license holders, *K*, **16**.

S. 50—Conviction without recalling license, *S*, **14**.

S. 53—Summary trial of offence under, *L*, **16**.

Act XIII of 1857, S. 4—Nature of arrest under, *E*, **15**, **16**.

Effect of S. 22, on, S. 22, **24**.

Act IV of 1866, Sale of muddut under, *R*, **14**.

Admixtures, of opium, S. 3, **5**.

Anchord, opium carried in a boat temporarily, in transit, *H*, **22**.

Animals, confiscation of, carrying opium, S. 11, **18**.

Appeal, order of confiscation not appealable, *U*, **18**.

Distribution of penalties under Act XIII of 1856—Appeal to High Court, *X*, **19**, **20**.

Arrears, recovery of, of fees, duties etc., S. 23, **24**.

Arrest, nature of, under Act XIII of 1857, *E*, **15**, **16**.

Power to, on information that opium is unlawfully kept in any enclosed place. S. 14, **20**.

Power to, persons believed guilty. S. 15, **22**.

Vexatious or without reasonable ground of suspicion, S. 18, **22**.

Warrant of. who can issue, S. 19, **23**.

disposal of person arrested, S. 20, **23**.

Report of, S. 21, **23**.

Attachment, of poppy cultivation. S. 22, **23**.

B

Beinchi, opium includes, *Y*, **11**.

Boat, excessive opium found in—Liability of master and crew, *F*, **12**.

Bond, recovery of penalty due under the, S 25, **25**.

Breach, of the conditions of license whether an offence, *T—Y*, **14**, **15**.

Building, power to enter, S. 14, **20**.

C

Chandu, Illegal manufacture of, *O*, **10**.

Manufacture of, for domestic use, out of opium illegally purchased, *P*, **10**.

Smoking in a, den whether evidence of abetment of illegal possession of opium by master of the den, *R*, **10**.

Charge, particulars of, under S. 9, *Z*, **15**.

Cheating, by false personation, *H*, **13**.

Civil Court, licensee's suit in, to try the demand of the farmer, S. 21, **24**.

Cognisable, Offence under S. 9 is a non, offence, *D*, **15**.

Commencement, of Act, S. 1, **5**.

Common carriers, not exempted from, S. 9, *T*, **18**.

Concealed, power to enter, arrest and seize on information that opium liable to confiscation is, S. 14, **20**.

Confiscated, power to make rules regarding disposal of things, S. 13, **19**.

Confiscation, of animal carrying opium, S. 11, **18**.

of conveyances carrying opium, S. 11, **18**.

of opium. S. 11, **18**.

of vessels, packages and coverings in which opium is found, S. 11, **18**.

Order of, not appealable, *U*, **18**.

Option to pay fine in lieu of, S. 12, **19**.

Order of, by whom to be made, S. 12, **19**.

Order of, when can be made, S. 12, **19**.

Possession of opium not satisfactorily accounted for, S. 12, **19**.

when offender cannot be found, S. 12, **19**.

when offender is not known, S. 12, **19**.

Power to enter, etc. on information that opium liable to, to be kept in an enclosed place, S. 14, **20**.

Construction, of S. 9, *O*, **17**.

Consumption, by licensed cultivator of opium legally possessed, *M*, **8**.

Contract Act, S. 74—Public duty, S. 25, **25**.

Conveyance, confiscation of, used in carrying opium, S. 11, **18**.

Proof necessary for confiscation of hired, *V*, **18**.

Conviction, punishment for offences under S. 9, **9**.

for illegal possession of opium on insufficient evidence, *G*, **13**.

without recalling license, *S*, **14**.

on discovery consequent on illegal search, *C—F*, **21**.

Coverings, confiscation of, in which opium is found, S. 11, **18**.

Crew, see BOAT, *F*, **12**.

Crim. Pro. Code, S. 4—Arrest under Act XIII of 1857, *E*, **15**, **16**.

Cultivation, prohibition of poppy, S. 4, **6**.

Rules permitting, of poppy, S. 5, **7**.

of poppy without license—License illegally withheld by Patwari, *L*, **8**.

Penalty for illegal, of poppy, S. 9, **9**.

Procedure in case of illegal poppy, S. 22, **23**, **24**.

Cultivator, consumption by licensed, of opium legally possessed, *M*, **8**.

Custody, on behalf of another whether equivalent to possession, *T*, *U*, **10**.

Customs officer, See POLICE OFFICER.

D

Defence, of proprietary right of others of opium illegally possessed, *U*, **10**.
Delegation of the power of Local Government to make rules, *H*, *I*, **7**, **8**.
Departments, officers of, mentioned in S. 14, to assist each other, S. 17, **22**.
Deposit, of opium in warehouse when to be made, S. 7, **9**.
Detain, power to, person believed guilty, S. 14, **20**.
Power to, persons believed guilty, S. 15, **22**.
Vexatious or without reasonable ground of suspicion, S. 18. **22**.
Disposal, rules regarding, of confiscated things, S. 13, **19**.
of person arrested or thing seized, S. 20, **23**.
Distribution, of penalties under Act XIII of 1856—Appeal, *X*, **19**, **20**.
Drugs, intoxicating, prepared from opium, S. 3, **5**.
Duty, rule regulating the farm of, leviable on the sale of opium, S. 5, **7**.
When shall not be levied on imported opium, S. 5, **7**.
on opium imported by land, S. 6, **8**.
Power to alter or abolish, on opium imported by land, S. 6, **8**.
Recovery of arrears of, imposed under the Act, S. 23, **24**.

E

Enclosed place, Power to enter, S. 14, **20**.
Enter, power to, on information that opium is unlawfully kept in any enclosed place, S. 14, **20**.
Entry, vexatious or without reasonable ground of suspicion, S. 18, **22**.
Excessive, opium found—Defence of joint possession, *E*, **12**.
opium found in a boat—Liability of master and crew, *F*, **12**.
Excise Act, searches under this Act and, distinguished, *B*, **21**.
Excise Officer, see POLICE OFFICER.
Search by, when justified, *Y*, *Z*, **20**, **21**.
Exclusive, occupation by accused of house in which opium is found, *D*, **12**.
Exemption, common carriers not exempted from, S. 9, *T*, **18**.
Export, definition of, S. 3, **6**.
Exportation, prohibiting, of opium, S. 4, **6**.
Rules permitting, of opium, S. 5, **7**.
Penalty for illegal, of opium, S. 9, **9**.
Extension, of Act, S. 1, **5**.
Evidence, smoking in a chandu den whether, of abetment by master, *R*, **10**.
Conviction on sufficient, *G*, **13**.

F

False personation, see PERSONATION.
Farmer, arrear due from any, of opium revenue, S. 23, **24**.
Lincensee's—Civil suit to try the demand of, S. 24, **24**.
may apply to Collector to recover amount due to him by license, S. 24, **24**.
of opium—revenue, Suit for payment, S. 24, **24**.
Fees, recovery of arrears of, imposed under the Act, S. 23, **24**.
Fine, procedure on imposing, S. 9, **10**.
Option to pay, in lieu of confiscation, S. 12, **19**.
Rewards out of fine, S. 13, **19**.

H

High Court, distribution of penalties under Act XIII of 1856—Appeal to, *X*, **19**, **20**.

Hired, conveyance—Confiscation, *V*, **18**.

House, Opium found in joint family—Liability of non-managing member, *C*, **12**.

Opium found in, exclusively occupied by the accused, *D*, **12**.

Husband, See WIFE, *B*, **12**.

I

Import, Definition of, S. 3, **5**.

Importation, prohibiting, of opium, S. 4, **6**.

Rules permitting, of opium, S. 5, **7**.

Duty on opium imported by land, S. 6, **8**.

Penalty for illegal, of opium, S. 9, **9**.

Imprisonment, in default of payment of fine, S. 9, **10**.

Information, power to enter, arrest and seize on, that opium is unlawfully kept in an enclosed place, S. 14, **20**.

Intoxicating, drugs prepared from opium, S. 3, **5**.

J

Joint family, Opium found in, house—Liability of non-managing member, *C*, **12**.

Joint offenders, penalty in cases of several, under Reg. XXI of 1827, *J*, **16**.

Joint trial, of unlicensed vendor and the licensee who allowed the sale, *I*, **16**.

Jurisdiction, competency of Magistrate in charge of Excise and Opium administration to try offences under the Act, *G*, **16**.

L

License, illegally withheld by patwari—Effect, *L*, **8**.

Who should get, to transport opium, *I*, *J*, **13**.

Who should grant, to transport opium, *L*, *M*, **13**.

Sale under Act IV of 1866—Police Commissioner's, *R*, **14**.

Conviction without recalling, *S*, **14**.

Breach of the conditions of, whether an offence, *T—Y*, **14**, **15**.

Liability of servants of licensed holders, *K*, **16**.

Licensee, farmer may apply to Collector to recover amount due by, S. 24, **24**.

Local Government, rules framed by, to be permissive, *G*, **7**.

Rules making power of, not to be delegated, *H*, *I*, **7**, **8**.

Meaning of 'opium' in rules framed by, *J*, *K*, **8**.

M

Magistrate, see JURISDICTION.

Definition of, S. 3, **5**.

Manager, see JOINT FAMILY, *C*, **12**.

Manufacture, prohibition of, of opium, S. 4, **6**.

Rules permitting, of opium, S. 5, **7**.

Penalty for illegal, of opium, S. 9, **9**.

Illegal, of chandu, *O*, **10**.

Manufacture—(Concluded).
of chandu for domestic use, out of opium illegally purchased, *P*, **10**.
Power to enter, arrest and seize on information that opium liable to confiscation is manufactured, S. 14, **20**.
Master, smoking in a chandu den whether evidence of abetment by, *R*, **10**.
See SERVANT, *B*, **12**.
See BOAT, *F*, **12**.
See SERVANT.
Muddut, is included in the term opium, *A*, **6**.

N

Neglect, to keep accounts under rules, *M*, **16**.
Notification, declaring a place to be a warehouse, S. 7, **9**.
declaring any place to be a warehouse, S. 7, **9**.

O

Offence, see JURISDICTION.
Breach of the conditions of license whether an, *T—Y*, **14**, **15**.
under Act not cognisable by Sessions Court, *A—C*, **15**.
under S. 9, a non-cognisable offence, *D*, **15**.
Tender of pardon for, under the Act, *H*, **16**.
Officers, to assist each other, S. 17, **22**.
Omission, penalty for omitting to warehouse opium, S. 9, **9**.
Onus, charge of illegal possession—*Onus* of proving legality, *P*, *Q*, **17**.
Open places, power to seize opium in, S. 15, **21**.
Opium, see CONFISCATION.
See PENALTY.
See POSSESSION, PENALTY.
Admixtures of, S. 3, **5**.
Definition of, S. 3, **5**.
Preparations of, S. 3, **5**.
Prohibiting export or import of, S. 4, **6**.
Prohibition of manufacture of, S. 4, **6**.
Prohibition of the possession of, S. 4, **6**.
Prohibition of sale of, S. 4, **6**.
Prohibition of the transport of, S. 4, **6**.
Taking, from one district to another, *B*, **6**.
Duty on, imported by land, S. 6, **8**.
Warehousing, S. 7, **8**, **9**.
Meaning of, in rules framed by Local Government, *J*, *K*, **8**.
Consumption by licensed cultivator of, legally possessed, *M*, **8**.
includes Beinchi, *Y*, **11**.
Confiscation of, S. 11, **18**.
Opium Officer, See POLICE OFFICER.
Order, of confiscation by whom to be made, S. 12, **19**.
of confiscation when can be made, S. 12, **19**.

P

Packages, Confiscation of, in which opium is found, S. 11, **18.**

Pardon, Tender of, for offence under the Act, *H*, **16.**

Penalties, Distribution of, under Act XIII of 1856—Appeal, *X*, **19, 20.**

Penalty, for illegal cultivation of poppy, S. 9, **9.**

for illegal manufacture of opium, S. 9, **9.**

for illegal possession of opium (*Ibid*).

for illegal transport of opium (*Ibid*).

for doing any illegal act in respect of warehoused opium (*Ibid*).

for contravening any rule under the Act (*Ibid*).

for illegal importation of opium (*Ibid*).

for illegal exportation of opium (*Ibid*).

for illegal sale opium (*Ibid*).

for illegal omission to warehouse opium (*Ibid*).

in case of several joint offenders under Reg. XXI of 1827, *J*, **16.**

Recovery of, due under the bond, S 25, **25.**

Personation, Cheating by false, *H*, **13.**

Police Commissioner, Need for license by—Sale under Act IV of 1866, *R*, **14.**

Police Officer, Liability of, for unauthorised search, *F*, **16.**

Power of, to enter, arrest and seize on information that opium is unlawfully kept in confined place, S. 14, **20.**

Poppy, heads is opium, S. 3, **5.**

Intoxicating drugs prepared from opium, S. 3, **5.**

Prohibition of, cultivation, S. 4, **6.**

Rules permitting cultivation of, S. 5, **7.**

Cultivation—License illegally withheld by patwari, *L*, **8.**

Penalty for illegally cultivating, S. 9, **9.**

Procedure in case of illegal, cultivation, S. 22, **23, 24.**

Possession, Prohibition of, of opium, S. 4, **6.**

Penalty for illegal, of opium, S. 9, **9.**

abetment of illegal, of opium, *Q*, **10.**

Nature of, under S. 9, cl. (c), *S*, **10.**

Custody on behalf of another, whether equivalent to, *T*, *U*, **10.**

Illegal, of opium—Defence of proprietary right of others, *U*, **10.**

of prescribed quantity with a mere intention to sell, *V*, **11.**

Illegal, of opium, *W*, *X*, **11.**

of railway receipt whether equivalent to possession of opium, *Z—A*, **11.**

by wife or servant, when amounts to possession by husband or master, *B*, **12**

Defence of joint, *C—E*, **12.**

Onus of proving legality of, *P*, *Q*, **17.**

Inference of illegal, not justified by facts, *S*, **17.**

Preparations, of opium, S. 3, **5.**

Presumption, Opium found in house in exclusive occupation of accused, *D*, **12**.
of illegality of sale of opium, *Q*, **14**.
Nature of, under S. 9, *R*, **17**.
Inference of illegal possession not justified by facts, *S*, **17**.
in prosecutions under S. 9, S. 10, **17**.
Procedure, on imposing fine, S. 9, **10**.
in case of illegal poppy cultivation, S. 22, **23, 24**.
on application to recover amount due to farmer by license, S. 24, **24**.
Prohibition, of import or export of opium, S. 4, **6**.
of sale of opium, S. 4, **6**.
of poppy cultivation, S. 4, **6**.
of manufacture of opium, S. 4, **6**.
of possession of opium, S. 4, **6**.
of transport of opium, S. 4, **6**.
Proof, necessary for confiscation of hired conveyance, *V*, **18**.
Prosecution, Presumption in, under S. 9, S. 10, **17**.

Q

Quantity, Excessive, of opium—Defence of joint possession, *E*, **12**.

R

Railway Receipt, Possession of, whether equivalent to possession of opium, *Z—A*, **11**.
Reg. XXI of 1827, Penalty in case of several joint offenders under, *J*, **16**.
Report, of arrest and seizures, S. 21, **23**.
Retail, Duty leviable on sale of opium by, S. 5, **7**.
Revenue Officer, See POLICE OFFICER.
Rewards, Power to make rules regulating, to officers and informers, S. 13, **19**.
Right of suit, Right of farmer of opium revenue to recover by suit in a Civil Court S. 24, **24**.
Rules, regulating transport of opium, *C—E*, **6**.
Power to make, permitting cultivation of poppy, S. 5, **7**.
——————— manufacture of opium. (*Ibid*).
Power to make, permitting importation of opium. (*Ibid*).
——————— exportation of opium. (*Ibid*).
——————— sale of opium. (*Ibid*).
——————— possession of opium. (*Ibid*).
——————— transport of opium. (*Ibid*).
regulating the form of duties leviable on sale of opium by retail. (*Ibid*).
Sub-lease in contravention of, not enforceable, *F*, **7**.
framed by Local Government to be permissive, *G*, **7**.
Power of Local Government to make, not to be delegated, *H*, *I*, **7, 8**.
meaning of 'opium' in rules framed by Local Government, *J*, *K*, **8**.
permitted under cl. (*f*) in S. 5, *N*, **8**.
Power to make, relating to warehouses, S. 8, **9**.
Neglect to keep accounts under, *M*, **16**.
Power to make, regarding disposal of things confiscated, S. 13, **19**.
Power to make, regulating rewards to be paid to officers and informers, S. 13, **19**.

S

Sale, Prohibition of, of opium, S. 4, **6**.
Rules permitting, of opium, S. 5, **7**.
Penalty for illegal, of opium, S. 9, **9**.
by servant of licensed vendor, whether an offence, *O*, **14**.
Illegal, by servant—Liability of master, *P*, **14**.
Presumption of illegality of, *Q*, **14**.
—of muddut under Act IV of 1866, *R*, **14**.
Salt Officer, See POLICE OFFICER.
Sea Customs, When duty shall not be levied on imported opium, S. 5. **7**.
Search, Liability of police officers for unauthorized, *F*, **16**.
to be conducted in the presence of respectable witnesses, *A*, **21**.
under this Act and Excise Act distinguished, *B*, **21**.
Conviction on discovery consequent on illegal, *C—F*, **21**.
Power to, person believed guilty, S. 14, **20**.
by Excise Officer when justified, *Y*, *Z*, **20**, **21**.
Power to, person believed guilty, S. 15, **22**.
how to be made, S. 16, **22**.
Vexatious or without reasonable ground of suspicion, S. 18, **22**.
without warrant when justified, *I*, **22**.
warrant for, who can issue, S. 19, **23**.
by Magistrate competent to issue search warrant, *J*, **23**.
Seize, Power to, on information that opium is unlawfully kept in any enclosed place. S. 14, **20**.
Power to, opium in open places, S. 15, **21**.
Persons authorized to, opium, *G*, **22**.
Seized, Disposal of thing, S. 20, **23**.
Seizure, Vexatious or without reasonable ground of suspicion, S. 18, **22**.
Seizures, Report of, S. 21, **23**.
Servant, Possession by, whether amounts to possession by master, *B*, **12**.
Sale by, of licensed vendor, *O*, **14**.
Illegal sale by—Liability of master, *P*, **14**.
Liability of, of license holders, *K*, **16**.
Sessions, Offence under Act not cognizable by Court of, *A—C*, **15**.
Sub-lease, in contravention of rules not enforceable, *F*, **7**.
Suit, See RIGHT OF SUIT.
Summary trial, of offence under Act XXI of 1856, *L*, **16**.
Surety, Arrears of fees or duties imposed under the Act may be recovered from, S. 23, **24**.
Suspicion, Entry etc. without reasonable ground of, S. 18, **22**.

T

Taking, opium from one district to another amounts to transport, *B*, **6**.
Transit, Power to seize opium in, S. 15, **21**.
Opium carried in a boat temporarily anchored in, *H*, **22**.

Transport, Definition of, S. 3, **6**
Prohibition of, of opium, S. 4, **6.**
Taking opium from one district to another amounts to, *B*, **6**
of opium—Madras rules regulating, *C—E*, **6.**
of opium from one district to another, *D*, *E*, **6.**
Rules permitting, of opium, S. 5, **7.**
Penalty for illegal, of opium, S. 9, **9.**
of opium—who should get license, *I*, *J*, **13.**
Who can transport opium, *K*, **13.**
Taluks farmed separately—Proper authorities to grant pass to, opium, *L*, *M*, **13.**

Trial, See JOINT TRIAL.
Summary trial of offence under Act XXI of 1856, *L*, **16.**

V

Vessel, Power to enter, S. 14, **20.**

Vessels, Confiscation of, in which opium is found, S. 11, **18.**

Vexatious, entries, searches, seizures and arrests, S. 18, **22.**

W

Warehouse, Penalty for omitting to, opium, S. 9, **9.**
Penalty for any illegal act in respect of warehoused opium, S. 9, **9.**

Warehouses, Authority establishing, S. 7, **8.**
Notification declaring places to be, S. 7, **9.**
Power to make rules relating to, S. 8, **9.**

Warehousing, Opium, S. 7, **8**, **9.**
Rules regulating levy of fees for, S. 8, **9.**

Warrant, Search without, when justified, *I*. **22.**

Warrants, how to be executed, S. 19, **23.**
who are authorized to issue, for offences under the Act, S. 19, **23.**
may be issued for arrest or for search, S. 19, **23.**

Wife, Possession by, whether amounts to possession by husband, *B*, **12.**

THE LAWYER'S COMPANION SERIES.

THE

CANTONMENT ACT, 1889

(ACT XIII OF 1889)

(WITH THE CASE-LAW THEREON)

BY

T. V. SANJIVA ROW,

FIRST GRADE PLEADER, TRICHINOPOLY.

(AUTHOR OF A "DIGEST OF PRIVY COUNCIL RULINGS,"
THE "CURRENT INDEX OF INDIAN CASES,"
THE "LAWYER'S REFERENCE,"
AND
THE "INDIAN EVIDENCE ACT.")

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THE CANTONMENT ACT, 1889.

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Title, extent and commencement.
2. Repeal.
3. Interpretation.

CHAPTER II.

CANTONMENTS AND CANTONMENT AUTHORITIES, COURTS AND POLICE.

Cantonments.

4. Definition of cantonments.

Cantonment Authorities and Magistrates.

5. Cantonment authority and Magistrate.
6. Cantonment authority.
7. Cantonment Magistrate.

Cantonment Court of Small Causes.

8. Appointment of Cantonment Magistrate as Judge of Cantonment Court of Small Causes.
9. Appointment of Additional Judge of Cantonment Court of Small Causes.
10. Judges of existing Cantonment Courts of Small Causes.
11. Continuance of jurisdiction of Cantonment Court of Small Causes in certain cases notwithstanding reduction of jurisdiction of Judge.

Cantonment Police.

12. Police.

CHAPTER III.

SPIRITUOUS LIQUORS AND INTOXICATING DRUGS.

13. Unauthorised sale of spirituous liquor or intoxicating drug.
14. Unauthorised possession of spirituous liquor.
15. Arrest of persons and seizure and confiscation of things for offences against the two last foregoing sections.
16. Saving of articles sold or supplied for medicinal purposes.

CHAPTER IV.

TAXATION AND CANTONMENT FUND.

Taxation.

SECTIONS.

17. General power of taxation.
18. Extension of Act XX of 1856 to certain cantonments.
19. Restriction of power of taxation in cantonments in which Act XX of 1856 is in force.
20. Power to prohibit or exempt from taxation.

Cantonment Fund.

21. Cantonment fund.
22. Custody of cantonment fund.
23. Vesting and management of cantonment fund.
24. Acquisition of immoveable property at cost of cantonment fund.

CHAPTER V.

SUPPLEMENTAL PROVISIONS.

25. Extension of enactments to cantonments.
26. Matters respecting which rules may be made.
27. Supplemental provisions respecting rules.
28. Extension of certain enactments and rules to places beyond cantonments.
29. Inapplicability of section 555, Act X, 1882, to trials of offences against this Act.
30. Cantonments in presidency-towns.
31. Protection of cantonment authority, Magistrate and commanding officer.
32. Registration.
33. Limitation of the operation of this Act.

THE SCHEDULE—ENACTMENTS REPEALED.

THE CANTONMENT ACT, 1889.

TABLE OF CASES NOTED IN THIS ACT.

		PAGE
	I. L. R. Allahabad Series.	
3 A 214	Empress of India v. Dosabhoy Framji	12
3 A 669	Patterson v. The Secretary of State for India in Council	25
6 A 148	The Secretary of State for India in Council v. Jagan Prasad	25
	I. L. R. Bombay Series.	
9 B 333	Queen-Empress v. W.D. Edwards	8
9 B 451	Sundardas Jagjivan Das v. Mohandas Ticumdas	10
12 B 169	Mohan Lall Raichand v. Vira Punja and others	10
14 B 286	The Cantonment Committee, Poona v. Bargonji Bamanji	25
16 B 702	Gulabchand Motiram v. Captain Georges	6—10
22 B 841	Queen-Empress v. William Plumner	20
31 B 523	Emperor v. Pascal Shiman	12
	I. L. R. Calcutta Series.	
9 C 341	E. D. Sinclair v. L. P. D. Broughton	30
15 C 452	Queen-Empress v. Ramdhani Passi	12—21
	I. L. R. Madras Series.	
8 M 428	Queen-Empress v. Lalla	23
	The Allahabad Law Journal.	
3 A L J 694	Mohib Ali v. Emperor	26, 27
4 A L J 694	Ram Saran Das v. King-Emperor	26
	The Allahabad Weekly Notes.	
A W N (1882) 52	Empress v. F. Todd	8
1887 A W N 19	Empress v. Kallan Khan	21
1887 A W N 219	Empress v. Latifan	20
A W N (1906) 303	Mohib Ali v. Emperor	26, 27
A W N (1907) 275	Ram Saran Das v. King-Emperor	26
	The Bombay High Court Reports.	
7 B H C 87	Reg v. Ladu daughter of Bhagu	13, 28
	The Bombay Law Reporter.	
* 9 B L R 703	Emperor v. Pascal Shiman	12
10 B L R 1052	Emperor v. Jaffar Haji Ismail	27

* In the body of the book this is wrongly printed as 9 Bom H C R

Ratanlal's Unreported Criminal Cases.

			PAGE
Rat Un Cr Cas 54 ...	Reg v. Shaikh Chegan	...	22
Rat Un Cr Cas 361...	Queen-Empress v. Chandri	...	21
Rat Un Cr Cas 398...	——— v. Gambhirmal	...	22
Rat Un Cr Cas 471...	——— v. Ramjan	...	23
Rat Un Cr Cas 476...	——— v. Suckoo	...	20
Rat Un Cr Cas 480...	——— v. Bhaya Ramratan	...	20
Rat Un Cr Cas 497...	——— v. Motilal	...	23
Rat Un Cr Cas 505 ...	——— v. Fakeera	...	12
Rat Unrep Cr Cas 541 ...	——— v. Santan	...	22
Rat Unrep Cr Cas 572 ...	——— v. Dollatta	...	22
Rat Unrep Cr Cas 609 ...	——— v. Charles Mac Ivor	...	22
Rat Un Cr C 636...	——— v. Navalammal	...	22
Rat Un Cr C 682...	——— v. Lakshman	...	11
Rat Un Cr C 706...	——— v. Antoni Fernandez	...	21
Rat Un Cr C 875 ..	——— v. Govinda Bapuji	..	23

The Calcutta Law Reports.

13 C L R 185 ...	E.D. Sinclair v. L.P.D. Broughtan	...	30

The Madras High Court Reports.

5 M H C R App. xxv.	———		9
7 M H C R Ap. 15...	———		12

The Madras Law Journal.

18 M L J 199 ...	Pestonji Jivanji v. Eduji Chinoy	...	26

The Central Provinces Law Reports

14 C P L R 135 ...	Kamptee v. Kisan Contractor	...	27

Oudh Cases.

7 O C 68 ...	Rai Narain Das v. King-Emperor	...	25
Oudh S C 104 ..	*In the matter of* Jehangir Singh	...	12

The Punjab Record.

1 P R 1873 (Cr) ...	The Crown v. Chattar	...	21
17 P R 1878 (Cr) ...	Keough v. The Crown	...	8
25 P R 1879 (Cr) ...	Fazlu v. Empress	...	20
40 P R 1884 (Cr) ...	Charde v. Empress	...	28, 29
2 P R 1885 (Cr) ...	Alladai v. Empress	...	29
48 P R 1887 (Cr) ...	Mela Ram v. Empress	...	22, 23, 29
9 P R 1895 (Cr) ...	Ram Pershad v. Queen-Empress	...	21
1 P R 1897 (Cr) ...	Queen-Empress v. Maula Baksh	...	9
19 P R 1904 (Cr) ...	King-Emperor v. Miran Baksh	...	24-28
23 P R 1905 (Cr) ...	Petman v. King-Emperor	...	24-27
47 P R 1905 (Cr) ...	Prabh Dial v. King-Emperor	...	25
1 P R 1906 (Cr) ...	Wazir-ullah v. The Crown	...	24
15 P R 1906 (Cr) ...	King-Emperor v. Maghi Ram	...	24
2 P R 1907 (Cr) ...	Fatteh Muhammad v. Said Ahmad & others	...	24-26

				PAGE
		The Punjab Law Reporter.		
167 P L R 1905	...	Madho v. The King-Emperor	...	21
168 P L R 1905	...	The Crown v. C. Bewan Petman	...	27
22 P L R 1907	...	Jawala v. The Crown	...	26
45 P L R 1907	...	King-Emperor v. Maghi Ram	...	26
47 P L R 1907	..	Gopal Sahai v. King-Emperor	...	24-26
		The Indian Appeals.		
9 I A 152	...	E. D. Sinclair v. L. P. D. Broughtan	...	30
		The Sind Law Reporter.		
1 S L R 4	...	Crown v. Bakuli	...	23
1 S L R 92	...	The Crown v. Bhuro	...	23
2 S L R 11	...	Imperator v. Mahro	...	26
3 S L R 11	...	Crown v. Deta Ram	...	26
		The Criminal Law Journal.		
3 Cr L J 78	...	Madho v. Emperor	...	21
3 Cr L J 301	...	Emperor v. C. Bevan Petman	...	27
4 Cr L J 374	...	Mohib Ali v. Emperor	...	26, 27
5 Cr L J 493	...	Gopal Sahai v. Emperor	...	26
5 Cr L J 593	...	Gopal Sahai v. King-Emperor	...	24
6 Cr L J 67	...	Emperor v. Pascal Shiman	...	12

THE CANTONMENT ACT, 1889.

ACT No. XIII OF 1889.

(*The 11th October, 1889.*)

An Act to amend the law relating to Cantonments.

WHEREAS it is expedient to amend the law relating to cantonments ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Title extent and commencement.

1. (1) This Act may be called the Cantonments Act, 1889.

(2) It extends to the whole of British India ; and

(3) It shall come into force on such day as the Governor-General in Council, by notification in the Gazette of India, appoints in this behalf.

Repeal.

2. (1) On and from that day the enactments specified in the schedule are repealed to the extent mentioned in the third column thereof :—

(2) But all orders, declarations [1], rules and regulations made, directions, licenses and permits given, taxes imposed and notifications published under any enactment repealed by this Act or under any enactment repealed by any enactment repealed by this Act, and all limits defined as the local limits of a cantonment with the approval of the Governor-General in Council or a Local Government before the passing of this Act, shall be deemed to have been respectively made, given, imposed and published, and to have been defined, under this Act.

(3) Any enactment or document referring to any enactment repealed by this Act, or to any enactment repealed by any enactment repealed by this Act, or to any Regulation of the Bengal, Madras or Bombay Code respecting the fixing of the local limits of cantonments and military bazaars, shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

(Notes).

1.—"Declarations."

Declaration made under repealed Act, validity of.

A declaration made under Act III of 1880 (Cantonments Act) which is repealed by this Act, is kept alive under this section and it is therefore such an order of the Local Government as is contemplated by S. 10 of this Act. A declaration fixing the pecuniary limit to a Court up to Rs. 200 under Act III of 1880, is therefore a valid declaration for the purposes of this Act. 16 B. 702. A

Interpretation.

3. (1) In this Act and in the rules thereunder, unless there is something repugnant in the subject or context,—

(*a*) "officer [1]" means—

(*i*) a person who, being an officer within the meaning of the Army Act, is commissioned and in pay as an officer doing military duty with Her Majesty's regular forces as defined in that Act or as an officer doing such duty in any arm, branch or part of those forces, and

(*ii*) a person doing military duty as a warrant officer with those forces or with any arm, branch or part thereof, whether he is or is not an officer within the meaning of the Army Act:

(*b*) "soldier" means a person who is a soldier of Her Majesty's regular forces within the meaning of the Army Act, and is not an officer within the meaning of this Act:

(*c*) "spirituous liquor" means any fermented liquor, any wine, any alcoholic liquid obtained by distillation, and the sap of any kind of palm-tree, and includes any other liquid consisting of or containing alcohol which the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the official Gazette, declare to be a spirituous liquor for the purposes of this Act:

(*d*) "intoxicating drug" means opium, ganja, bhang, charas and every preparation and admixture thereof, and includes any other intoxicating substance or liquid which the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the official Gazette, declare to be an intoxicating drug for the purposes of this Act: and

(*e*) "owner" includes the person who is receiving or entitled to receive the rent of any building or land, whether on his own account or on behalf of himself and others or as an agent or trustee, or who would so receive the rent or be entitled to receive it if the building or land were let to a tenant.

(2) The provisions of the General Clauses Acts, 1868 and 1887, shall, so far as they can be made applicable, apply to all rules which may be made under this Act by the Governor-General in Council.

(Notes).

1.—"Officer."

Police Officer not an Officer.

The definition of officer in this section does not include a Police Officer. 1 S. L.R. 137. **B**

CHAPTER II.

CANTONMENTS AND CANTONMENT AUTHORITIES, COURTS AND POLICE.

Cantonments.

Definition of cantonments.

4. (1) The Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the official Gazette, declare any place in which any of Her Majesty's regular forces are quartered within the territories administered by such Government to be a cantonment for the purposes of this Act and of all other enactments for the time being in force, and may withdraw any such declaration.

(2) The Local Government, with the like sanction, may also, by a like notification, define the limits of any cantonment for the like purposes.

Cantonment Authorities and Magistrates.

Cantonment authority and Magistrate.

5. For every cantonment beyond the limits of a presidency-town there shall be a cantonment authority and a Cantonment Magistrate.

Cantonment authority.

6. (1) The expression "cantonment authority" as used in this Act means a cantonment committee or, where a cantonment committee has not been constituted or has in pursuance of an order of the Local Government ceased to exist, or for any reason cannot be convened, then, subject to any rules made under section 26, clause (5) the commanding officer of the cantonment.

(2) The Local Government shall determine, with respect to every cantonment in which troops are for the time being quartered, whether or not a cantonment committee is to be constituted.

(3) The cantonment authority shall be deemed to be a local authority as defined in the Local Authorities Loan Act, 1879, the Cattle-trespass Act, 1871, the Indian Telegraph Act, 1885, and the General Clauses Act, 1887.

Cantonment Magistrate.

7. The Cantonment Magistrate [1] shall be a Magistrate appointed by the Local Government under section 12 of the Code of Criminal Procedure, 1882 [2], and, as such, subordinate to the District Magistrate or to the District Magistrate and the Sub-divisional Magistrate, as the case may be, under section 17 of that Code.

(Notes).

I.—"Cantonment Magistrate."

(1) **District Magistrate, power to try offence triable by Cantonment Magistrate.**

Where the accused was convicted for disobedience of order duly published by a public servant under the cantonment rules which provided that every non-resident owner of a house in the cantonment should provide a duly constituted agent for the same and the case was tried by the District Magistrate while the offence was triable only by the Cantonment Magistrate, *held*, the conviction could not be sustained. A.W. N. (1882), 52. **C**

(2) **Assistant Cantonment Magistrate, jurisdiction of.**

An Assistant Cantonment Magistrate under S. 5 of Act XXII of 1864 notwithstanding that he was appointed by the Local Government to act as Cantonment Magistrate has no jurisdiction under S. 20 of the Act to try the accused for breaches of the cantonment rules. 17 P.R. 1878 (Cr.). **D**

(3) **Summary trial by Cantonment Magistrate, validity of.**

The summary conviction and punishment of two police officers by a Cantonment Magistrate without formal trial was held irregular and illegal. *Held* also that Cantonment Magistrates have power to try cases under S. 29 of the Police Act without complaint. 1 Agra 24. **E**

(4) **Cantonment Magistrate, jurisdiction of.**

A European British subject not belonging to or connected with the army, residing within the cantonment is amenable to the jurisdiction of Cantonment Magistrate. 4 B H.C.R. 187. **F**

(5) **High Court, power to transfer case from Cantonment Magistrate's file.**

The Cantonment Magistrate of Secunderabad in the capacity of District Magistrate is subordinate to the High Court in criminal matters relating to Christian European British subjects in Hyderabad, and the High Court has power under S. 526, Cr. P.C., to transfer a criminal case pending in the Cantonment Magistrate's Court to itself or to any other Criminal Court. 9 B. 333. **G**

1.—"Cantonment Magistrate"—(Concluded).

(6) **Cantonment Magistrate, power to try European British subject.**

The Cantonment Magistrate has no jurisdiction to try a European British subject, for an offence under S. 48 of Act XXIII of 1859. 5 M.H.C. R. App. XXV. **H**

2.—"Under S. 12 of the Code of Criminal Procedure."

Appeal from convictions by Cantonment Magistrate.

Since Rule 35 of the rules framed under Cantonments Act, 1864, has been abrogated by this section, convictions by Cantonment Magistrates of offences punishable under cantonment rules are appealable to the same extent as convictions by other Magistrates of the same classes. 1 P.R. 1897 (Cr.). **I**

Cantonment Court of Small Causes.

Appointment of Cantonment Magistrate as Judge of Cantonment Court of Small Causes.

8. (1) When the Local Government appoints the Cantonment Magistrate to be the Judge of a Court of Small Causes established within a cantonment under the Provincial Small Cause Courts Act, 1887, it shall, in its order appointing him to be such Judge, declare, and may by notification in the official Gazette vary, within a limit of five hundred rupees, the value of the suits which are to be cognizable by him under that Act.

(2) The provisions of section 15, sub-section (3), of the said Act shall not apply to a Court of Small Causes of which a Cantonment Magistrate is the Judge.

Appointment of Additional Judge of Cantonment Court of Small Causes.

9. When the Local Government appoints an Additional Judge of a Court of Small Causes, of which a Cantonment Magistrate is the Judge, it shall, in its order appointing him to be such Additional Judge, declare, and may by notification in the official Gazette vary, within a limit of fifty rupees, the value of the suits with respect to which the functions of the Judge of the Court may be assigned to, and discharged by, the Additional Judge under section 8 of the Provincial Small Cause Courts Act, 1887.

Judges of existing Cantonment Courts of Small Causes.

10. Every Cantonment Magistrate [1] presiding over a Court of Small Causes in a Cantonment at the commencement of this Act, and every Assistant Cantonment Magistrate then having any of the powers of the Judge of such Court, shall be deemed to have been appointed Judge and Additional Judge, respectively, under section 6 and section 8 of the Provincial Small Cause Courts Act, 1887, and in the absence of any order of the Local Government to the contrary to have jurisdiction with respect to all suits which are cognizable by a Court of

Small Causes under that Act and of which the value does not exceed, in the case of a Cantonment Magistrate, five hundred rupees and, in the case of an Assistant Cantonment Magistrate, fifty rupees.

(Notes).

1.—"Cantonment Magistrates."

Small Causes—Cantonment Magistrate, jurisdiction of.

(1) Where a defendant is amenable to the articles of war he can be sued only in the Court of the Cantonment Magistrate; but in all other cases a defendant may be sued also in the Court of the Subordinate Judge provided he has jurisdiction. 9 B. 454. **J**

(2) A plaintiff may sue in the Cantonment Magistrate's Court although he is not carrying on business or living within the limits of the Military Cantonment. 9 B. 454. **K**

(3) Where the jurisdiction of the Cantonment Magistrate extended up to Rs. 200 and there was a City Small Cause Court having jurisdiction up to Rs. 500, and the plaintiff was residing within the limits of the Cantonment Magistrate while the defendant was residing within the jurisdiction of the City Small Cause Court and the plaintiff's suit on a bond executed by the defendant in cantonment, which was filed in the Court of the Cantonment Magistrate was returned to be presented to the City Small Cause Court, *held* that, both the Courts had jurisdiction but the Cantonment Magistrate's Court being one of lower grade, ought to try the suit according to the Civil Procedure Code. 12 B. 169. **L**

(4) Under this section, the Cantonment Judge has jurisdiction at a Court of Small Causes up to Rs. 500 only in the absence of any order of the Local Government to the contrary. Where a suit was filed in the Court of the first class subordinate Judge of Belgaum for Rs. 172 as arrears of rent in its Small Cause jurisdiction, which extended up to Rs. 500 and there was also the Court of the Belgaum Cantonment Magistrate invested with Small Cause powers under this section, held the Cantonment Court alone had jurisdiction. 16 B. 702. **M**

Continuance of jurisdiction of Cantonment Court of Small Causes in certain cases notwithstanding reduction of jurisdiction of Judge.

11. A Cantonment Magistrate as Judge of a Court of Small Causes may, whatever may be the value of the suits cognizable by him as such Judge, dispose of any suit which was within the pecuniary limits of the jurisdiction of the Judge presiding over the Court at the time of the institution of the suit, and may entertain and dispose of any proceeding after decree in any such suit.

Cantonment Police.

Police.

12. (1) The police-force employed in a cantonment beyond the limits of presidency-town shall, for the purposes of Act XXIV of 1859 (for the better regulation of the police within the territories subject to the Presidency of Fort

St. George) or Act V of 1861 (for the regulation of Police) or the corresponding law for the time being in force in the territories administered by the Governor of Bombay in Council, as the case may be, be deemed to be part of the general police establishment under the superintendence of the Local Government in whose territories the cantonment is situated.

(2) The area comprised within the limits of a cantonment shall be deemed to be a town for the purposes of section 34 of Act V of 1861.

CHAPTER III.

SPIRITUOUS LIQUORS AND INTOXICATING DRUGS.

Unauthorised sale of spirituous liquor or intoxicating drug.

13. If within a cantonment, or within such limits around a cantonment as the Local Government may, by notification in the official Gazette, prescribe in this behalf, any person not subject to military law or any person subject to military law otherwise than as an officer or soldier knowingly barters, sells [1] or supplies [2], or offers or attempts to barter, sell or supply any spirituous liquor [3] or intoxicating drug to or for the use of any (soldier [4], or follower or soldier's wife) without the written permission of the commanding officer of the cantonment or of some person authorised by the commanding officer to grant such permission, he shall be punished with a fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

(Notes).

Whipping cannot be awarded under this section.

S. 21 of Bombay Act (III of 1867) having been repealed by this Act which substitutes in its place this section containing no mention of whipping, that punishment is not kept alive by S. 2 of this Act. Rat. Unrep. Cr. C. 682. **N**

1.—"Barters, sells."

Barters, or sells, meaning of.

The context of the words "barters or sells," in this section indicates that it has the same idea underlying it in common with them. It also relates to a transaction between two persons dealing at arms' length and thus independent of each other. 31 B. 523=9 Bom. L.R. 703=6 Cr. L.J. 67. **O**

2.—"Supplies."

Servant supplying liquor to master whether an offence.

Where the accused, a servant of a soldier bought liquor from a shop in obedience to his master's orders, with the master's money and gave it to him and was convicted by the Magistrate under this section

2.—"Supplies"—(Concluded).

for supplying liquor to a soldier, *held* the term *supply* must have a restricted meaning put upon it and it was inapplicable to a servant giving his master liquor belonging to the master himself. 31 B. 523=9 Bom. H.C.R. 703=6 Cr. L.J 67. P

3.—"Spirituous liquor."

(1) **Spirituous liquor, meaning of.**

Tari or toddy is "spirituous liquor (within the meaning of S. 14 of Act III of 1880, Cantonments). The words spirituous liquor, wine, and intoxicating drugs in the section must be taken in their popular and ordinary meaning. 15 C. 452. Q

(2) **Beer not a spirituous liquor.**

Beer is not included in the term spirituous liquor as used in S. 30 of Madras Act, I of 1866. 7 M.H.C.R. Ap. 15. R

4.—"Soldier."

Soldier, meaning of.

(1) A Sub-Conductor in the Commissariat Department is not a soldier within the meaning of the section and consequently the sale of spirituous liquor to his wife without the license required by the section is not an offence. 3 A. 214. S

(2) Where the accused were fined for selling liquor for the use of one Private Harrison, who got pay from the Civil Department for the discharge of civil duties as Telegraph Master in which he was continuously employed and lived in Telegraph Office outside the cantonment boundary and attended no drills, held Private Harrison was not a soldier under the circumstances. Oudh S.C. 104. T

Unauthorised possession of spirituous liquor.

14. If within a cantonment, or within such limits around a cantonment as the Local Government may, by notification in the official Gazette, prescribe in this behalf,—

(*a*) any person subject to military law otherwise than as an officer or soldier, or

(*b*) the wife or servant of any such person or of a soldier,

has in his or her possession except on behalf of the Government or for the private use of an officer more than one quart of any spirituous liquor other than fermented malt-liquor without the written permission of the commanding officer of the cantonment or of some person authorised by the commanding officer to grant such permission, he or she shall be punished in the case of a first offence against this section with fine which may extend to fifty rupees, and in the case of a subsequent offence against this section with fine which may extend to one hundred rupees or with imprisonment for a term which may extend to three months.

Arrest of persons and seizure and confiscation of things for offences against the two last foregoing sections.

15. (1) Any police-officer (or excise officer) may, without an order from a Magistrate and without a warrant, arrest any person whom he finds committing an offence against either of the two last foregoing sections, and may seize and detain any spirituous liquor or intoxicating drug in respect of which such an offence has been committed, and any vessels or coverings in which the liquor or drug is contained.

(2) Where a person accused of an offence against section 13 has been previously convicted of an offence against that section, an officer in charge of a police-station may, with the written permission of a Magistrate, seize and detain any spirituous liquor or intoxicating drug within the cantonment, or within the limits prescribed under section 13, which at the time of the alleged commission of the subsequent offence belonged to, or was in the possession of, the person.

(3) The Court convicting a person of an offence against section 13 or section 14 may order the confiscation of the whole or any part of anything seized under sub-section (1) or sub-section (2).

(4) Subject to the provisions of Chapter XLIII of the Code of Criminal Procedure, 1882, anything seized under sub-section (1) or sub-section (2) and not confiscated under sub-section (3) shall be restored to the person from whom it was taken.

(Note).

Prosecution on report of police-officer, legality of.

Reports of police or medical officers are not sufficient sanction for a prosecution under the Act. A complaint on oath or solemn affirmation is necessary. 7 B.H.C. 87. **U**

Saving of articles sold or supplied for medicinal purposes.

16. The foregoing provisions of this Chapter shall not apply to the sale or supply of any article for medicinal purposes by a medical practitioner, chemist or druggist.

CHAPTER IV.

TAXATION AND CANTONMENT FUND.

Taxation.

General power of taxation.

17. (1) With the previous sanction [1] of the Governor General in Council, the Local Government may, by notification in the official Gazette,—

(*a*) impose in any cantonment which is not included in a municipality any tax which, under any enactment in force at the date of the notification, can be imposed in any municipality within the territories administered by such Government, and

(*b*) abolish or modify any tax so imposed.

(2) When any tax is leviable in a cantonment in pursuance of a notification under sub-section (1), the Local Government, with the like sanction, may, by a like notification apply or adapt to the cantonment the provisions of any enactment or rules in force at the date of the notification for the assessment and recovery of any tax in any municipality within the territories administered by such Government.

(Note).

For local rules and orders, refer to Appendix.

1.—" Sanction."

Cantonments to follow Municipalities, in taxation.

The intention of the Legislature, is that cantonments should ordinarily follow Municipalities in the matter of taxation. It is considered undesirable, if not absolutely illegal to sanction for any cantonment a form of taxation not already permitted in some Municipality within the same province. G.G.O. (M.D.) No. 1445 C., dated 19th August, 1890. **Y**

Extension of Act XX of 1856 to certain cantonments.

18. (1) The Local Government may, by notification in the official Gazette, extend the provisions of Act XX of 1856 (to make better provision for the appointment and maintenance of Police Chaukidars in Cities, Towns, Stations, Suburbs and Bazaars in the Presidency of Fort William in Bengal) to any cantonment which is not included in a municipality and which, is situated in any part of British India in which that Act is in force, and the Cantonment Magistrate may exercise all the powers of the Magistrate under that Act, subject only to the control of the District Magistrate and the Local Government.

(2) The Local Government may order that a cantonment to which the provisions of Act XX of 1856 have been extended shall be divided into any number of cantonment divisions, and may determine the nature of the tax to be levied in each such division according to section 10 of that Act.

(3) The Local Government may, by notification in the official Gazette, cancel any notification under sub-section (1), and may revoke or vary any order under sub-section (2).

Restriction of power of taxation in cantonments in which Act XX of 1856 is in force.

19. While a tax assessed according to the circumstances, and the property to be protected, of the persons liable thereto, or according to the annual value of houses and grounds, is levied under Act XX of 1856 in a cantonment, a tax on persons practising any profession or art or carrying on any trade or calling, or a tax on buildings and lands, as the case may be, shall not be leviable in the cantonment in pursuance of a notification under section 17 of this Act.

Power to prohibit or exempt from taxation.

20. (1) Notwithstanding anything in any enactment for the time being in force, the Governor General in Council may, by notification in the Gazette of India, prohibit the levy of the whole or any part of any tax imposed in a cantonment, or exempt any person by name or in virtue of his office or any class of persons, or any property or any class of property, from the operation of any such tax, and may, by a like notification, rescind any such prohibition or exemption.

(2) Where the area, subject to the authority of a municipal committee as defined in section 2 of the Municipal Taxation Act, 1881, includes the whole or part of a cantonment, nothing in section 4 or section 5 of that Act or in any other like enactment for the time being in force shall apply to so much of that area as is comprised in the cantonment.

Cantonment Fund.

Cantonment fund.

21. (1) There shall be formed for every cantonment which is not included in a municipality a cantonment fund, and there shall be placed to the credit thereof, among other sums, the following, namely :—

(*a*) subject to deductions under section 545 of the Code of Criminal Procedure, 1882, or under any other enactment for the time being in force or under any order of the Local Government, all fines recovered from persons convicted of offences committed within the cantonment against this Act or against any enactment extended or rule made thereunder, or against the provisions of section 34 of Act V of 1861 or the corresponding enactment for the time being in force in the territories administered by the Governor of Fort St. George in Council or by the Governor of Bombay in Council, or

against the provisions of Chapter XIII or Chapter XIV of the Indian Penal Code or of section 156 of the Army Act;

(b) the proceeds of taxes imposed under section 17 or levied under Act XX of 1856 in the cantonment; and

(c) rents and profits accruing from property placed by the Government under the management of the cantonment authority.

(2) Notwithstanding anything in any enactment as to the purposes to which the proceeds of a tax are to be appropriated, the cantonment fund shall be applicable, subject to the rules under this Act, to the maintenance of the police-force employed in the cantonment and to the other purposes of this Act within the cantonment and, with the general or special sanction of the Local Government, to like objects, within or without British India, beyond the limits of the cantonment in cases in which, in the opinion of the Local Government, the application of the fund beyond those limits is for the benefit of the inhabitants of the cantonment or of any military force ordinarily quartered therein or of any detachment of any such force.

Custody of cantonment fund.

22. (1) Where, in or near a cantonment there is a Government treasury or sub-treasury or a bank to which the Government treasury business has been made over, the cantonment fund shall be kept in the treasury, sub-treasury or bank.

(2) Where there is no such treasury, sub-treasury or bank, the cantonment fund may be deposited with any banker or person, acting as a banker, who has given such security for the safe custody and repayment on demand of the fund so deposited as the District Magistrate may in each case think sufficient.

Vesting and management of cantonment fund.

23. The cantonment fund shall be vested in Her Majesty, and subject to the provisions of this Act and of the rules thereunder and to the control of the Local Government, the management of the fund shall be entrusted to the cantonment authority.

Acquisition of immoveable property at cost of cantonment fund.

24. The cantonment fund shall be deemed to be "public revenues" within the meaning of the proviso to section 6 of the Land Acquisition Act, 1870, and any property acquired at the cost of the cantonment fund shall vest in Her Majesty.

CHAPTER V.

SUPPLEMENTAL PROVISIONS.

Extension of enactments to cantonments.

25. The Governor General in Council may, by notification in the Gazette of India, extend to all cantonments or to any cantonment or to any part of any cantonment any enactment for the time being in force in any municipality in British India, and declare its extension to be subject to such restrictions and modifications, if any, as he thinks fit.

Matters respecting which rules may be made.

26. The Governor General in Council may make rules [1] consistent with this Act to provide for all or any of the following matters, namely :—

(1) the manner in which, and the authority to which, application for permission to occupy land belonging to the Government in a cantonment is to be made ;

(2) the conditions to be annexed to every such permission given in pursuance of such an application ;

(3) the preparation and maintenance of registers of immoveable property in cantonments ;

(4) the constitution of cantonment committees, the functions to be discharged by them, the conduct of, and the control to be exercised over, their proceedings, and the division of duties among the members of such committees ;

(5) the functions to be discharged by the commanding officer of a cantonment where a cantonment committee has not been constituted, or has in pursuance of an order of the Local Government ceased to exist, or for any reason cannot be convened ;

(6) the executive duties of the Cantonment Magistrate and his position in relation to the commanding officer of the cantonment ;

(7) the purposes to which the cantonment fund may be applied;

(8) the authority on which money may be paid from the cantonment fund ;

(9) the investment of any balance of that fund ;

(10) the execution of contracts by, or on behalf of, the cantonment authority ;

(11) the accounts to be kept by the cantonment authority, and the manner in which those accounts are to be audited and published ;

(12) the definition and abatement of nuisances for which sufficient provision has not, in the opinion of the Governor-General in Council, been made under section 25 ;

(13) the requisitions which may be made on persons having the control of sewers, drains, latrines or other things creating, or likely to create, nuisances, and the mode of enforcing such requisitions ;

(14) the prevention of the overcrowding of buildings and places in a cantonment.

(15) the construction and maintenance, to the satisfaction of the cantonment authority, of buildings and of boundary-walls, hedges and other fences ;

(16) the regulation of the practice of agriculture and irrigation in a cantonment, the keeping of lands therein in proper order, and the felling, lopping and trimming of trees on such lands ;

(17) the regulation of encamping-grounds, sarais, markets and slaughter-houses, of traffic on roads, and of processions and public assemblies ;

(18) the use and management of burial and burning grounds;

(19) the supervision and the regulation of the use of public wells, tanks, rivers, streams, springs or other sources from which water is or may be made available for public use, and of the lands in the vicinity thereof ;

(20) the parts of a cantonment in which persons practising any profession or carrying on any trade, calling or occupation may be required to reside for the purpose of practising the profession or carrying on the trade, calling or occupation, and the conditions, if any, to be observed by such persons ;

(21) the prevention of the spread of infectious or contagious disorders within a cantonment, and the appointment and regulation of hospitals or other places within or without a cantonment for the reception and treatment of persons suffering from any disease ;

(22) the segregation in, or the removal and exclusion from, a cantonment, or the destruction of animals suffering or supposed to be suffering from any infectious or contagious disease ;

(23) the suppression of mendicancy and of loitering or importuning for the purpose of prostitution, and the removal and exclusion from a cantonment of disorderly persons, of persons who have been convicted of any offence against Chapter XVII of the Indian Penal Code, or section 156 of the Army Act, or have been ordered under the Code of Criminal Procedure, 1882, to execute a bond for their good behaviour, and of persons whom the commanding officer deems it expedient to exclude from the cantonment with or without assigning any reason for excluding them therefrom ;

(24) the prevention of cruelty to animals and the care of animals while grazing;

(25) the prevention and extinction of fires;

(26) the registration of births and deaths ;

(27) the appointment by owners of buildings and lands in cantonments, who are absent from cantonments, of persons residing within or near cantonments, to act as their agents for all or any of the purposes of this Act or any enactment extended or rule made thereunder ;

(28) the powers of inspection, entry and search which may be exercised in carrying out any of those purposes, and the cases in which breaches of enactments extended or rules made under this Act are to be cognizable offences ;

(29) the mode in which summonses, notices, requisitions and other documents are to be served on the persons to whom they are addressed ;

(30) the cases, authorities and conditions in, to and on which executive orders passed under this Act or any enactment extended or rule made thereunder may be appealed from ; and,

(31) generally, the carrying out of the purposes of this Act :

(Notes).

For local rules and orders, refer to Appendix.

I.—" Rules "

(1) **Additional fine in rule 2 when to be imposed.**

The additional fine referred to in rule 2 of the rules framed under S. 26 of this Act is not only to be imposed after the first conviction, but is also to follow proof that failure is persisted in. The additional fine cannot

"Rules"—(Continued).

however be imposed as a threat to prevent possible persistence, which cannot be made the subject of enquiry being one of future. The continuing failure must be a matter of later and separate inquiry and proof. 22 B. 841. W

(2) **Arrest of unregistered prostitute, validity of.**

Where the accused were arrested by the Police in the Railway platform at Jullunder on a charge of having contravened the provisions of rule 6 by practising as public prostitute within the limits of the cantonment without being registered as prostitute, and there was no evidence on the record to show that they contemplated an infringement of the rule and the Deputy Commissioner fined them Rs. 50 each and directed them to be entered in the register and examined by the Civil Surgeon, *held* (1) the police had no authority to arrest on the platform but should have followed the procedure laid down in rule 29; (2) the Deputy Commissioner had no authority to direct the examination of the women after their receipt of tickets. 25 P.R. 1870 (Cr.). X

(3) **Registered prostitute—Cantonment rules, breach of.**

Where under the cantonment regulations, a prostitute was convicted, for not having gone to the hospital for inspection as a registered prostitute was bound to do but the Sessions Judge found that she was not a consenting party to the registration and did not carry on the occupation of prostitute, *held* that at the findings arrived at by the Session Judge the conviction was bad and should be set aside. 1887 A.W.N. 219. Y

(4) **Beating of drum on public road, whether an offence.**

The beating of drum *per se* is not a public nuisance and does not come within the management and regulation of public roads. Where the accused was convicted of a breach of rule 68 of Ch. III, cantonment rules, for having beaten a drum at a specified time, *held*, the act did not come within either sub-sec. 5 or 6 of S. 11 of Bombay Act III of 1867. Rat. Unrep. Cr. Cas. 480. Z

(5) **Right of cantonment authorities to forbid use of public road.**

Cantonment rules must if their language admits be interpreted so as to uphold their legality under the law under which they are passed. Rule 63 of the rules passed under S. 10, cl. 6 of Bombay Act III of 1867 which gives power to make rules for the management and regulation of the public road did not authorise the cantonment authorities to forbid altogether the use of a public road under ordinary circumstances. Rat. Unrep. Cr. Cas. 476. A

(6) **Cholera, not reporting case of, whether an offence.**

Where the accused had taken no steps to report his father's illness (cholera) and the Cantonment Magistrate convicted him of a breach of rule II of Chapter III of the Punjab Cantonment rules issued under Act III of 1880 and stated in his judgment that in consequence of the outbreak of cholera in the cantonments he had had it proclaimed in bazaars for two days that wherever any grievous illness especially "diarrhœa" occurred, the relatives of the patient were at once to give warning to the police, *held*, on the facts found, there had been

I.—"Rules"—(Continued).

no breach of rule II and, to disregard the Cantonment Magistrate's direction to report the occurrence, was not a criminal offence. 9 P.R. 1895 (Cr.). **B**

(7) **Common gaming house, meaning of.**

(*a*) Where a house was rented by some members of a community in the name of one of the members who kept the house and the use of the house was not open to the public but was restricted to the members and some members played for moneywith cards, the members keeping the house not making any profit by way of charge for the use of either the cards or the house, *held*, the house was not a common gaming house within the meaning of rule 75, Chapter III of the rules under Bombay Act, III of 1867, S. 11 and legalized by S. 2 of this Act. Rat. Unrep. Cr. Cas. 706. **C**

(*b*) Persons found gambling in a common gaming house cannot be said to be using the house as a common gaming house within the terms of S. 66 (1) (*g*) of the Cantonment Code. 167 P.L.R. 1905=3 Cr.L.J. 78. **D**

(8) **Gaming in public place, when an offence.**

Where the accused was convicted under rule 67, Chapter III, of gaming in a public place, and the place was described by the lower Court as in the open air between a barrack wash-house and kitchen, by the side of a path leading from the public road and visible from the public road, *held* the place was not public within the meaning of the rule. 1 P.R. 1873 (Cr.). **E**

(9) **Cantonment Magistrate power of, to cancel license.**

A Cantonment Magistrate has no authority in his judicial capacity to cancel the license of a person who has been convicted of an offence under the Act, as the power to cancel licenses belongs to the revenue authorities. 15 C. 452. **F**

(10) **Cantonment rules—Public place, meaning of.**

Where a person was tried and convicted for being drunk and riotous in his master's compound, held the compound was not a public place, within the meaning of rule 63 of Chapter III of the cantonment rules made under S. 17 of Act XXII of 1864 and kept in force by this Act. 1887 A.W.N. 19. **G**

(11) **Lock hospital not a public place.**

A lock hospital is not a public place within the meaning of rule 71 of the cantonment rules. Rat. Unrep. Cr. Cas. 361. **H**

(12) **Encroachment—Omission to make declaration, validity of.**

Before a person can be convicted under rule 59 (3) of the cantonment rules of the offence of encroachment by erecting a building on a public road the Cantonment Magistrate should have made with the sanction of the Cantonment Committee such declaration in respect of the building as is contemplated by the rule. The omission to make such a declaration cannot be cured by a sanction given by the Committee after the trial. Rat. Unrep. Cr. Cas. 505. **I**

I.—"Rules"—(Continued).

(13) **Failing to construct privy whether an offence.**

A person cannot be convicted under rule 9 for failing to construct a privy according to notice issued by the Cantonment Magistrate because (1) failure to comply with notice is not punishable; (2) a Cantonment Magistrate is not authorised to require any person to construct a privy of a particular kind or any privy at all. Rat. Unrep. Cr. Cas. 541. **J**

(14) **Fowl-run, lattice-work, whether a house.**

A structure of lattice-work erected as fowl-run in the compound of a house in a cantonment is not a house or a hut within the meaning of rule 50, Chap. III, Cantonments Act, 1864. Rat. Unrep. Cr. Cas. 609. **K**

(15) **Keeper of house or place of public resort, meaning of.**

The owner of a house who lets it to prostitutes but does not himself live in it or exercise control over the inmates is not a keeper of a house or place of public resort or entertainment, within the meaning of rule 74. Rat. Unrep. Cr. Cas. 572. **L**

(16) **Keeping compound of house in dirty state, when an offence.**

The mere finding that the compound of a house of which the accused is the landlord was kept in a dirty state is not sufficient to support a conviction under rule 7. To justify a conviction it must be found that the accused being the owner or occupier of the house had allowed dirt, filth, etc., to be kept for more than 24 hours on the ground attached to and occupied with the house. Rat. Unrep. Cr. Cas. 398. **M**

(17) **Neglect to repair house, whether an offence.**

A person who neglects to repair his house within the cantonment limits does not commit an offence punishable under rule 57, Chapter III, of the cantonment rules. Rat. Unrep. Cr. Cas. 636. **N**

(18) **Offensive trade, prosecution for.**

In the case of offensive trades, the Cantonment Magistrates should before the institution of proceedings make the declaration specified in Chapter III, rule 48 of the rules and regulations under Bombay Act III of 1867. Rat. Unrep. Cr. Cas. 54. **O**

(19) **Owner of house not appointing agent whether an offence.**

(*a*) A rule which requires a person to do an act which merely facilitates the observance by or enforcement against another person of rules for maintaining the cantonment in a sanitary condition is not a rule for maintaining the cantonment in a sanitary condition within the meaning of cl. 6 of S. 27 of Act III of 1880 and is not therefore within the power conferred, the act to be done being too remotely connected with the purpose for which rules may be framed under the power given. 48 P.R. 1887 (Cr.). **P**

(*b*) When the accused a resident of Lahore but also owner of the house within the Cantonment of Jullander was convicted by the Cantonment Magistrate of Jullunder of a breach of rule 68 of the rules framed under S. 27 of Act III of 1880 in that he had neglected to appoint an agent to carry out the orders of the Cantonment Committee after repeated notices sent to him during the preceding year without effect, held the above rule was not a valid rule inasmuch as it required by its last

1.—"Rules"—(Continued).

clause the house owner to perform an impossible act as no owner by appointing an agent could render the agent answerable in the sense contemplated by the said clause. 48 P.R. 1887 (Cr.). **Q**

(c) Rule 76 of the cantonment rules which requires every owner of certain property within the limits of a cantonment to appoint a resident agent who shall be responsible for the observance of the rules referring to the owners of such property is not a rule, the omission to comply with which is penal under S. 11 of Cantonments Act, 1867. Rat. Unrep. Cr. Cas. 497. **R**

(20) **Taking diseased cattle to public slaughter house, when an offence.**

Where the accused butchers took diseased cattle to a public slaughter house for getting them passed by the Inspector in charge as fit for food and for slaughtering them if passed *held*, these acts were not punishable under rule 34, chapter III of Cantonment Rules, as that rule applied only to owners or occupants of places used as slaughter houses who have killed a diseased animal therein or have failed to report to the Cantonment Magistrate that such an animal had been taken thither for being killed. Rat. Unrep. Cr. Cas. 471. **S**

(21) **Temporary construction, when an offence.**

A temporary construction is an offence only if it shall be declared by the Cantonment Magistrate with the sanctions of the Cantonment Committee to be objectionable on sanitary grounds or on account of causing encroachment, according to chapter III, of the rules and Regulations framed under S. 9 of Bombay Act III of 1867 and maintained by S. 2 of this Act. Rat. Unrep. Cr. Cas. 875. **T**

(22) **Validity of rules under Cantonments Act, 1867.**

The validity of rules framed or in force under the Cantonments Act, 1867 and unimpeachable under that Act is continued to them by cl. 2 of this section even though they be not in accord with the powers specified in this section. 1 S.L.R. 4. **U**

(23) **Washing of clothes in a tank, when an offence.**

In order to constitute the washing of clothes in a tank within the cantonment limits an offence within rules 31 of Chapter III of the rules under this Act, there must be a prohibition of such use of the tank by the Cantonment Magistrate with the consent of the Cantonment Committee. 1 S.L.R. 92. **V**

(24) **Private individual failing to report epidemic whether an offence.**

No penalty attaches to a failure on the part of a private individual to report to the Cantonment Magistrate the appearance of an epidemic or contagious disease as directed by the Cantonment rules. 8 M. 428. **W**

(25) **Small pox, failure to report, not punishable.**

Failure on the part of a house-holder to report a case of small pox in his house as directed by S. 16 of Chapter IV of the Cantonment Act rules is not punishable under Madras Act I of 1866. 8 M. 428. **X**

(26) **Adulterating milk by adding water not punishable.**

Where the accused was convicted under rule 39 of cantonment rules under Bom. Act, III of 1867, of the offence of adulterating milk by mixing water with it so as to make it noxious as drink, intending to sell the

I.—"Rules"—(Continued).

same, held that the mere admixture of water with milk is not sufficient to render it noxious as drink and that the conviction must be reversed. Such cases must be dealt with under S. 420, I.P.C. Bom. Cr. Rg. XIV of 1888. **Y**

(27) **Cantonment authorities, power of Civil Courts over.**

Cantonment authorities have discretionary power to issue such orders as they think proper with reference to the repair of any building and which in the opinion of that authority the public safety may require, and the Civil and Criminal Courts have no jurisdiction to interfere with the discretion unless it is exercised corruptly or maliciously. 19 P. R. 1904 (Cr.). **Z**

(28) **Failure to comply with illegal notice, whether offence.**

(*a*) Where the Cantonment Committee sent a notice to the accused for removing the remains of a club building destroyed by fire as they were dangerous to public safety, and was convicted for failing to remove, *held* the notice was illegal as it was essential that the owner should be given the option of repairing the building which (option) was not given in this case and the conviction was reversed. 23 P. R. 1905 (Cr.). **A**

(*b*) Where the authority to issue a notice under rule 94 is vested by the Code in a constituted committee, or sub-committe, a notice issued by the Cantonment Magistrate on his own single authority without any reference to, or direction, or consideration by the sub-committee of which he was only one of the members is *ultra vires*, and a conviction under rule 104 for disobedience of such notice is illegal. 3 P. R. Cr. (1907) = 5 Cr.L.J. 493 = 47 P L.R. 1907. **B**

(29) **Judicial Courts—Jurisdiction to interfere in cantonment cases.**

Though the judicial Courts have no jurisdiction to interfere with the orders issued by the Cantonment authorities or those passed in appeal by the Appellate authority, yet in cases where Criminal proceedings are taken out for breach of such orders and a conviction obtained, it is open to the Chief Court to review the proceedings, test the legality of the orders and decide whether the conviction is good. 1 P. R. 1906 (Cr.). **C**

(30) **Order for repairing private house, validity of.**

The provisions (of S. 94, Cantonment Code) are not intended for effecting repairs in houses in cantonments which may be dangerous to the persons occupying them or uninhabitable. The words public *safety mean* the safety of the general public and not of a particular person and hence where the cantonment authorities have not come to a conclusion before issuing notice that repairs are necessary for public safety the judicial Courts can declare the notice illegal and set it aside. 1 P. R. 1906 (Cr.). **D**

(31) **Failure to pay rent for stall, no offence.**

Failure to pay rent for stall rented from the cantonment authority is not a breach of any provision of the Cantonment Code and is therefore not recoverable under the penal provisions of the Code. 15 P. R. 1906 (Cr). **E**

1.—"Rules"—(Continued).

(32) **Condition in license opposed to the rules, validity of.**

Where the condition in a license for selling aerated waters in cantonment was that aerated waters manufactured only by the company approved of by the cantonment committee should be sold, and the licensee was convicted for infringing the conditions, *held* that the condition was *ultra vires* and invalid as the Code authorised the committee only to lay down the sources from which the water used for the manufacture is procured and did not authorise it to restrict a license to certain manufacturers as his source of supply of aerated-waters, and the conviction was set aside. 47 P.R. 1905 (Cr.). **F**

(33) **Repairs not contemplated by Act, failure to do.**

Where the Cantonment Magistrate directed certain general repairs not contemplated by the Cantonment Code, to be made in a house, and convicted accused for the breach of the same, *held* that repairs being not the kind of repairs contemplated by the Cantonment Code the conviction was illegal. 7 O.C. 68. **G**

(34) **Resumption of ground granted under Cantonment regulations.**

Certain ground in cantonment was granted for building purposes by the military authorities in 1802, and long after, such cantonment was abandoned and handed over to the Collector The Government sued the heir of the grantee for rent or ejection. *Held* that under the military regulations, such a grant cannot be resumed without a month's notice and without payment of the value of any buildings which may have been authorised to be erected and Government was entitled only to a declaration of ownership. 3 A. 669. **H**

(35) **Resumption of land granted under regulations, condition of.**

Where land situated in cantonment was granted for building purposes by the military authorities under their regulations, the Government could eject the grantee or his heirs only on paying the value of the buildings, where the latter does not consent to pay rent. 6 A. 148. **I**

(36) **Appropriation of private houses for use of military authorities.**

The military authorities cannot appropriate to their own use houses of private individuals in cantonments except subject to the regulations on the faith of which the houses were built or purchased. A person in occupation of a house in cantonment cannot be ejected without due notice. 1 Ind. Jur. N.S. 88. **J**

(37) **Cantonment committee, right to sue and be sued.**

The rules of the Cantonment Committee, though by express words or by implication, create the committee a corporation for the purpose of the conservancy of the Cantonment, and hence the committee can sue and be sued in its own name on contracts entered into in its corporate character. 14 B. 286. **K**

(38) ***Alienation* of land for purposes unconnected with the military requirements.**

Where the Nizam's Government allotted land to the British force in Secunderabad Cantonment for its head-quarters, it no doubt by necessary implication conveyed to the military authorities all powers

1.—"Rules"—(Continued).

of jurisdiction, control and management incident to maintaining the efficiency of the troops and the peace and good order and convenient use of the cantonment; but the officer commanding the troops could not be held empowered to alienate land in cantonment (undoubtedly Hyderabad territory), for a purpose unconnected with military requirements. 18 M.L.J. 199. **L**

(39) **Cantonment Magistrate, power of, to issue order on his own initiative.**

Under S. 17 of the Cantonment Code the Cantonment Magistrate is the executive officer of the cantonment authority and all orders must be issued through him but he has no authority on his own initiative to issue an order under S. 96 and an order not based on an opinion formed by the cantonment committee or one issued by them has no legal validity as an order under S. 96 (2) (*a*) and (*b*). 3 S.L.R. 11. **M**

(40) **Notice by one of two members of sub-committee, legality.**

Where the cantonment committee delegated the power to issue notices under Cantonment Code to a sub-committee of two members, any single member had no power to issue a notice to a house owner to repair his house. 4 A.L.J. 694 = A.W.N. (1907) 275. **N**

(41) **Notice, defect in authority in issue of, effect of.**

The defect in authority to issue notice under the Cantonment Code is not a defect or irregularity not affecting the merits of the case and cannot be condoned by rule 291. 3 P.R. Cr. (1907) = 5 Cr. L.J. 493 = 47 P.L.R. 1907. **O**

(42) **Boundary wall, notice to remove, to be issued by whom.**

Under sub-S. 2 (*a*) and (*b*) of S. 96 of the Cantonment Code the cantonment authority, *i.e.*, the cantonment committee is the only authority that can require the owner of land to remove a boundary wall and that, before an order can be legally issued even by a cantonment committee, the members of that body must form the opinion that the wall is unsustainable, unsightly or otherwise objectionable. 3 S.L.R. 11. **P**

(43) **Hackney carriage-fee, failure to pay, effect of.**

Failure to pay hackney carriage fee to cantonment authority is not punishable either under S. 22 or 282 of the Cantonment Code. 22 P.L.R. 1907. **Q**

(44) **Stallage or rent, failure to pay, effect of.**

S. 283, Cantonment Code provides a penalty in cases not otherwise provided for, for failure to comply with any notice under or for breach of any of the provisions of the Cantonment Code. But in a contract of renting a stall, notice to pay stallage or rent is not a notice under the Code and failure to pay such stallage or rent is not a breach of any provision of the Code within the terms of S. 283. 45 P.L.R. 1907. **R**

(45) **Selling brown sugar within cantonment, whether an offence.**

Brown sugar is not an article of food which is of a perishable nature within the meaning of S. 167 cl. (*j*) of the Cantonment Code and the person selling it within the Cantonment is not guilty of any offence. 3 A. L.J. 694 = 4 Cr. L.J. 374 = A.W.N. (1906) 303. **S**

I.—" Rules "—(Concluded).

(46) **Starting dairy without license, conviction for, validity of.**

Where the accused applied for a license to start a dairy under S. 167 (*e*) of the Cantonment Code, 1899, and his application was arbitrarily and illegally refused by the cantonment authority in construction of the proviso to S. 167 to the effect that a license shall not be withheld if the applicant is willing to comply with such conditions as the cantonment authority may think fit to impose under S. 168, and the accused then proceeded to start a dairy without license and was prosecuted and convicted under Ss. 183 and 167 Cantonment Code *held*, the conviction was bad in law. 14 C.P.L.R. 135. **T**

(47) **Liability of master for offence committed by servant.**

A master cannot be punished for an offence under the Cantonment Code committed by his servant in carrying meat in a bullock cart exposed to public view, which is not proved to have been committed with his knowledge or authority. 10 Bom. L.R. 1052. **U**

(48) **Magistrate instituting prosecution, duty of, before trying accused.**

Where a Cantonment Magistrate institutes a prosecution, under the Cantonment Code against the accused, he ought to inform him that the latter is entitled to have his case tried by another Magistrate and his not doing so is an irregularity which will vitiate the proceedings. 3 A. L.J. 694 = 4 Cr.L.J. 374 = A.W.N. (1906) 303. **V**

(49) **Offences contemplated by Cantonment Code, nature of.**

The offences contemplated by S. 66 (1) of the Cantonment Code are personal offences and not offences which can be committed by delegation. 10 Bom. L.R. 1052. **W**

(50) **Appeal to commanding officer, rejection of, without hearing.**

The petitioner, the liquidator of the Club of Northern India was required by the Cantonment Committee by notice under S. 94 to demolish certain roofless walls of the Club as being dangerous to public safety. On petitioner denying apprehension of danger by way of reply, he was directed to appeal to the general commanding officer under S. 104. The appeal was rejected summarily without hearing. The Magistrate convicted the petitioner. *Held* on revision that the conviction must be set aside as it was illegal for the commanding officer to decide the appeal summarily and as no option was given the petitioner to repair or remove whereas S. 94 gives the option. 23 P.R. 1905 (Cr.) = 168 P.L.R. 1905 = 3 Cr. L.J. 301. **X**

Supplemental provisions respecting rules.

27. (1) The power to make rules under the last foregoing section is subject to the condition of the rules being made after previous publication and of their not taking effect until they have been published in the Gazette of India and in such other manner as the Governor-General in Council prescribes.

(2) A rule under the last foregoing section may be general for all cantonments in British India or for all cantonments not expressly

excepted from its operation, or may be special for the whole or any part of any one or more than one cantonment, as the Governor-General in Council directs.

(3) A copy of the rules for the time being in force in a cantonment shall be kept open to inspection free of charge at all reasonable times in the office of the Cantonment Magistrate.

(4) In making any rule under clause (12) or any of the following clauses of the last foregoing section, the Governor-General in Council may direct that a breach of it shall be punished with fine which may extend to fifty rupees, or with imprisonment for a term which may extend to eight days, and, when the breach is a continuing breach, with fine which, in addition to such fine or imprisonment as aforesaid, may extend to five rupees for every day after the first during which the breach continues.

(Notes).

(1) **Fine and imprisonment in default cannot be ordered simultaneously.**

In case of convictions under the Cantonment Act (Bom. Act III of 1867) simultaneous sentence of fine and imprisonment in default of payment is illegal. Imprisonment in default of payment of fine can be awarded only in the event of no property sufficient for the payment of fine being found. 7 B.H.C.R. 87. See, also, 40 P. R. 1884 (Cr.). **Y**

(2) **Prospective daily fine for failure to comply with order.**

Cantonment Code does not allow a prospective daily fine for failure to comply with an order under the Cantonment Code in respect of the period between the date of the conviction and the date on which the order may be complied with. 19 P.R. 1904 (Cr.). **Z**

Extension of certain enactments and rules to places beyond cantonments.

28. The Local Government may, by notification in the official Gazette and subject to any conditions as to compensation or otherwise which it may see fit to impose, extend to any area beyond a cantonment and in the vicinity thereof—

(*a*) any enactment which, with or without restriction or modification, has been extended to the cantonment or any part thereof under section 25, or

(*b*) any rule in force in the cantonment or any part thereof under clause (12) or any of the following clauses of section 26, as well as any direction there in force under sub-section (4) of section 27.

and the enactment, rule or direction specified in the notification shall, so long as the notification remains uncancelled, apply to that area[1] as if the area were included in the cantonment.

(Notes).

1.—Apply to that area.

(1) **Trial of offences committed beyond the limits of Cantonment—Procedure.**

When the rules of the Cantonment are extended to places beyond the limits of the Cantonment, trials for breaches of rules should be conducted by Criminal Courts under the general jurisdiction conferred by the Criminal Procedure Code, there being no authority specially mentioned in the Act (XXII of 1864) for holding such trials. 12 P.R. 1870 (Cr.) **A**

(2) **Unregistered prostitute carrying her trade, legality of.**

Where a prostitute was convicted for practising without being registered as such at Delhi within the limits outside the Cantonment which were extended by the Punjab Government with the sanction of the Government of India, *held* the Magistrate had jurisdiction to try the case on complaint but not on the report by the police. 2 P.R. 1885 (Cr.). **B**

Inapplicability of section 555, Act X, 1882, to trials of offences against this Act.

29. A Judge or Magistrate shall not be deemed within the meaning of section 555 of the Code of Criminal Procedure, 1882, to be a party to, or personally interested in[1], any prosecution for an offence against this Act, or against any enactment extended or rule made thereunder, because he is a member of the cantonment committee or, where there is no such committee, is the commanding officer of the cantonment or because he has ordered or approved the prosecution.

(Notes).

1.—"Personally interested in."

(1) **Disqualification of Judge, circumstances creating, to be explained.**

In every case where it is urged that there is a disqualification in the Judge the circumstances creating the disqualification must be clearly determined before effect could be given to the objection and they ought to be specified in the objection. 48 P. R. 1887 (Cr.). **C**

(2) **Personal interest, Revision by Chief Court, in cases of.**

The proceedings of a Cantonment Magistrate are liable to be reversed by the Chief Court, Punjab, in revision, on the ground of disqualifiction in the Cantonment Magistrate, in a particular case owing to personal or pecuniary interest or bias. 40 P. R. 1884 (Cr.). **D**

Cantonments in presidency-towns.

30. Where a cantonment is situated within the limits of a presidency-town, the functions assigned to any authority by this Act or any enactment extended or rule made thereunder shall, subject to the provisions of any

enactment for the time being in force, be discharged by such authority as the Local Government may appoint in this behalf.

Protection of cantonment authority, Magistrate and commanding officer.

31. A suit or prosecution shall not be entertained [1] in any Court against any cantonment authority, authority appointed under the last foregoing section, Cantonment Magistrate or commanding medical or other officer for anything in good faith done or purporting to be done in pursuance of powers conferred by or under this Act on such authority, Magistrate or officer, whether the thing done was or was not authorised by the powers so conferred.

(Notes).

1.—"A suit or prosecution shall not be entertained."

Cantonment officer—Liability for damages.

Where an officer commanding in Cantonments, *bona fide* in the discharge of public duty, and under the belief that A was a dangerous lunatic, confined him in his own house under a guard of soldiers, and the Officer had the control of the police in Cantonments but did not proceed under Act XXXVI of 1858, and A was found not a dangerous lunatic, *held* in a suit for damages, that the officer was liable as he had not proceeded under Act XXXVI of 1858. 13 C.L.R. 185=9 C. 341=9 I.A. 152. **E**

Registration.

32. (1) Section 54, paragraphs 2 and 3, and sections 59, 107 and 123 of the Transfer of Property Act, 1882, with respect to the transfer of property by registered instrument, shall, on and from the commencement of this Act extend to every cantonment in British India.

(2) Where a cantonment has not been constituted a sub-district or district for the purposes of the Indian Registration Act, 1887, under section 9 of that Act, the Registrar of the district in which the cantonment is situated shall cause a copy of such entries in Indexes Nos. I and II as relate to immoveable property within the limits of the cantonment to be forwarded to the Cantonment Magistrate annually or at such shorter intervals as the Local Government may prescribe.

Limitation of the operation of this Act.

33. The Governor-General in Council may, by notification in the Gazette of India, exclude from the operation of the whole or any part of this Act the whole or any part of any cantonment.

THE SCHEDULE.

ENACTMENTS REPEALED.

(*See section 2.*)

Number and year.	Subject or title.	Extent of repeal.
1	2	3
	Acts of the Governor-General in Council.	
Act XVIII of 1853...	Sale of spirits in cantonments	The whole, so far as it has not been repealed.
Act IV of 1854 ...	Sentences of Superintendents of Bazaars ...	The whole, so far as it has not been repealed.
Act XLV of 1860 ...	Indian Penal Code ...	The words "or before a Military Court of Request" in *Explanation 1* to section 193.
Act V of 1869 ...	Indian Articles of War...	Part III, clause (*c*): and for the last twenty-seven words of Part I. clause (*f*), the following shall be substituted, namely :— "and offices in charge of the police in cantonments are defined and controlled."
Act VII of 1870 ...	Court-fees Act, 1870 ...	Section 19, clause IV, and in Schedule II, article 1, clause (*a*), the words "or to any Cantonment Magistrate sitting as a Court of Civil Judicature under Act No. III of 1859."
Act XV of 1874 ...	Laws Local Extent Act, 1874	So much of the second schedule as relates to Madras Regulation XIV of 1832 ; so much of the third schedule as relates to sections 18, 19, 20, 45, 46 and 47 of Bombay Regulation XXII of 1827 : and so much of the fourth and fifth schedules as relates to Bengal Regulation XX of 1810.
Act XX of 1875 ...	Central Provinces Laws Act, 1875	So much as relates to Bengal Regulation XX of 1810.
Act XVIII of 1876...	Oudh Laws Act, 1876...	So much as relates to Bengal Regulation XX of 1810.
Act III of 1877 ...	Indian Registration Act, 1877. ...	The second paragraph of section 9, beginning with the word "Whenever" and ending with the word "thereof."

THE SCHEDULE.—(*Concluded*).

Number and year.	Subject or title.	Extent of repeal.
1	2	3
Acts of the Governor-General in Council—(Concluded).		
Act XIV of 1879 ...	Hackney-carriage Act, 1879. ...	Section 4, from and inclusive of the words "and the Governor-General in Council may" down to and inclusive of the words "in which British troops are cantoned."
Act III of 1880 ...	Cantonments Act, 1880...	So much as has not been repealed.
Act XXII of 1881...	Excise Act, 1881 ...	The proviso to section 53.
Act X of 1882 ...	Code of Criminal Procedure, 1882 ...	Clause (*b*) of section 1.
Act XIV of 1882 ...	Code of Civil procedure...	Section 6, clause (*a*), the words "an officer or" in section 468, and the whole of section 469.
Regulation of the Bengal Code.		
Regulation XX of 1810. ...	Military Bazars ...	So much as has not been repealed.
Regulation of the Bombay Code.		
Regulation XXII of 1827 ...	Military authority ...	So much as has not been repealed, except sections 40, 41, 42 and 43.
Acts of the Governor of Fort St. George in Council.		
Act IV of 1865 ...	Madras Cantonments ...	The whole, so far as it has not been repealed.
Act I of 1866 ...	Madras Cantonments ...	So much as has not been repealed.
Act of the Governor of Bombay in Council.		
Act III of 1867 ...	Bombay Cantonment Act of 1867 ...	So much as has not been repealed.
Act of the Lieutenant-Governor of Bengal in Council.		
Act VII of 1878 ...	Bengal Excise Act, 1878 ...	The proviso to section 81.
Regulation under the Statute 33 Victoria, Chapter 3.		
III of 1877 ...	Ajimere Laws Regulation, 1877 ...	Section 39 and so much as relates to Bengal Regulation XX of 1810.

APPENDIX.

Local Rules and Orders.

(1) Aden, Cantonment of, revised limits of. See Notification No. 126 dated 7th March 1888, B. G. G. 1888 Pt. I, p. 227.

(2) Applying S. 21 Bom. Act III of 1872 to a portion of Cantonment of Settlement of Aden. See Notification dated 25th October 1872 B. G. G. 1872 Pt. I, p. 1143.

(3) Ahmadabad, limits of the Cantonment of. See Notification No. 258 dated 15th May 1893 B. G. G. 1893 Pt. I, p. 430.

(4) Ahmadnagar, applying S. 21 of Bom. Act III of 1867 to certain local area in Cantonment of Ahmadnagar. See notification No. 6367 dated 8th Sep. 1885 B. G. G. 1885 Pt. I, p. 1117.

(5) Ahmadnagar, limits of the Cantonment of. See Notification No. 78 dated 13th Feb. 1889 B. G. G. 1889, Pt. I, p. 127.

(6) Amballa Cantonment, House scavenging tax imposed in. See Notification No. 767 dated 15th March 1906. 41 P. R. Government Orders, p. 21.

(7) Ambala District, Scavenging tax imposed in. See Notification No. 57 dated 4th January 1906. 41 Punjab Government Orders, p. 2.

(8) Amritsar Cantonment, Cantonment house. Accommodation Act declared to be operative in. See Notification No. 547 dated 28th April 1905. 40 Punjab Government Orders, p. 18.

(9) Amritsar Cantonment, Cantonment House Accommodation Act declared to be operative in. See Notification No. 393 dated 23rd March 1906. 41 Punjab Government Orders, p. 35.

(10) Amritsar Cantonment, House Scavenging tax imposition of, in. See Notification No. 1988 dated 29th Oct. 1907. 42 Punjab Government Orders, p. 69.

(11) Amritsar Cantonment, provisions of Ss. 49—61, etc., of the Punjab Municipal Act, applied to, regarding assessment and recovery of taxes. See Notification No. 1989 dated 29th Oct. 1907. 42 Punjab Government Orders, p. 70—73.

(12) Bakloh Cantonment, imposition of water-tax in. See Notification No. 2021 dated 20th July 1906. 41 Punjab Government Orders, p. 90.

(13) Bakloh Government, House Scavenging tax imposed in. See Notification No. 1954 dated 21st Oct. 1907. 42 Punjab Government Orders, p. 68.

(14) Balun Cantonment, Provisions of S. 55, Punjab Municipal Act extended to. See Notification No. 385 dated 17th August 1906. P. R. 41 Supreme Government Orders, p. 30.

(15) Barrackpore Cantonment, Provisions of Ss. 279 to 286 of Bengal Municipal Act (Act III of 1884) applied to, for assessment and recovery of water-rate. See Notification No. 4063 M. dated 22nd Nov. 1895, Cal. Gaz. 1895, part I-B, pp. 257—258.

(16) Barrackpore Cantonment, Rules 196 to 206 of the Cantonment Code 1899 extended to the vicinity of. See Notification No. 2356 Y.—M. dated 3rd Nov. 1900. Cal. Gaz. 1900, Pt. I, p. 1230.

(17) Boundaries of Cantonments, rules regarding—. See G. O. No. 595 (XII—495C dated 27th April 1892). Manual of Orders of Government U. P. of Agra and Oudh. XII, 19.

(18) Boundaries, of Cantonment. See G. G. O. (M. D) No. 1144 M. W. $\frac{\text{Cantonments}}{\text{Boundaries}}$ dated 10th April 1900. Manual of Orders of Government of the U. P. of Agra and Oudh. XII—19.

(19) Campbellpur Cantonment, certain sections of the Municipal Act extended to, for the assessment and recovery of house-scavenging tax. See Notification No. 675 dated 7th March 1906. P. R. 41 Punjab Government Orders, p. 17.

(20) Campbellpur cantonment, imposition of House—Scavenging tax in. See Notification No. 674 dated 7th March 1906. P. R. 41 Punjab Government Orders, p. 17.

(21) Campbellpur Cantonment, Latrine Tax abolished in. See Notification No. 673 dated 7th March 1906. P. R. 41 Punjab Government Orders, p. 17.

(22) Cantonment Code 1899, Correction made in. See Order No. 664 dated 16th June 1899. No. 95 dated 6th Feb. 1903. P.R. 38 Sup. Govt. Orders, p. 1.

(23) Cantonment Code, certain provisions of, extended to Sial Kot Municipality. See Notification No. 883 dated 11th October 1906. P. R. 41 Punjab Government Orders, p. 121.

(24) Cantonment Code, alterations in. See Army Dept. No. 577 dated 16th Nov. 1906. P. R. 41 (1906) Supreme Govt. Orders, p. 33.

(25) Cantonment Hospital funds, rules regarding. See G. G. 5 dated 12th May 1904. P. R. 39 Acct. Dept. Orders, p. 6.

(26) Cantonment House Accommodation Act. Certain Houses in Cantonments excluded from the operation of S. 6 of the Act. See Notification No. 1307 dated 4th Nov. 1904. P.R. 39 Punj. Govt. Orders, p. 56.

(27) Cantonment House Accommodation Act, declared to be operative in specified Cantonments. See Notification No. 1306 dated 4th Nov. 1904. P.R. 39 Punj. Govt. Orders, p. 56.

(28) Cantonment House Accommodation Act II of 1902, Rules under. See Notification No. 117 dated 16th Feb. 1906. P. R. 41 Supreme Govt Orders, p. 2.

(29) Cantonment Police, rules for the administration of. See G. O. No. 3101 dated 4th Sept. 1882. Manual of Orders of Govt. U. P. of Agra and Oudh, XII—19.

(30) Cantonment Police, increased charge of. See G.G.O. No. 2318 C dated 30th Dec. 1897. Manual of Orders of Govt. U.P. of Agra and Oudh. XII—20.

(31) Cantonments—Rule 204 Cantonment Code, extension of, to certain Municipalities adjoining Cantonments. See Notification No. 2361 T.M. dated 3rd Nov. 1900 Cal. Gaz. 1900, Pt. I, p. 1231.

(32) Contracts—Execution of—referred to in S. 59 Cantonment Code, See G.O. No. 2237 XII—410-E dated 30th November 1899. Manual of Orders of Govt. U.P. of Agra and Oudh. XII, p. 24.

(33) Corrections in the revised limits in G. G. O. No. 126 dated 7th March 1888. See Notification No. 320 dated 10th July 1888. B. G. G. 1888 Pt. I, p. 587.

(34) Cuttack Cantonment, imposition of tax in. See Notification No. 1826 M. dated 17th April 1894 Calcutta Gazette 1894 Part I-B, p. 133.

(35) Cuttack Cantonment, last para of S. 335 Bengal Municipal Act III (B.C.) of 1884, applied to, for recovery of tax. See Notification No. 1827 M. dated 17th April 1894 Cal. Gaz. 1894, Part I-B, p. 133.

(36) Cuttack Cantonment, provisions of Ss. 336 to 343 of the Bengal Municipal Act III of 1884 as amended by Act IV of 1894, applied to for assessment and recovery of tax. See Notification No. 2604 M. dated 1st July 1895 Cal. Gaz. 1895, Part I-B p. 150.

(37) Cuttack Cantonment, imposition of tax in continuation of Notification No. 1826-M. See Notification No. 2603-M. dated 1st July 1895 Cal. Gaz. of 1895, Part I-B, p. 150.

(38) Dalhousie Cantonment, House Scavenging tax imposed in. See Notification No. 1176 dated 3rd April 1906. P. R., 41 Punjab Government Orders, p. 36.

(39) Dalhousie Cantonment, Tax abolished. See Notification No. 1175 dated 3rd April 1906. P. R. 41. Punjab Government Orders, p. 36.

(40) Darjeeling Cantonment, imposition of tax in. See Notification No. 950-M. dated 7th March 1901. Cal. Gazette 1901. Part I-B, p. 49.

(41) Darjeeling Cantonment, provisions of Part IX of the Bengal Municipal Act III of 1884 applied to, for the assessment and recovery of tax. See Notification No. 951-M. dated 7th March 1901. Cal. Gaz. 1901 Part I-B, pp. 49, 50.

(42) Darjeeling Cantonment, provisions of Part IV of the Bengal Municipal Act III of 1884, applied to, for assessment and recovery of tax. See Notification No. 949-M. Dated 7th March 1901. Cal. Gaz. 1901, part I-B, pp. 43—49.

(43) Darjeeling Cantonment, imposition of tax in. See Notification No. 948 M, dated 7th March 1901. Cal. Gaz. 1901, part I B, p. 43.

(44) Delhi Cantonment, Rules for assessment and recovery of taxes in. See Notification No. 1790 dated 9th Aug. 1905. P. R. 40 Punj. Government Orders, p. 19.

(45) Delhi Cantonment, Water-tax imposed on buildings in. See Notification No. 1789 dated 9th Aug. 1905. P. R. 40 Punj. Govt. Orders, p. 19.

(46) Deolali declared to be a Military Cantonment. See Notification No. 435 dated 3rd June 1869. B.G.G. 1869 Pt. I, p. 719.

(47) Deolali, limits of the Cantonment of. See Notification No. 420 dated 29th August 1894. B.G.G. 1894 Pt. I, p. 883 in supersession of G.O.G. No. 179 dated 29th March 1887.

(48) Dera Ghazi Khan Cantonment, Cantonment House Accommodation Act declared to be operative in a portion of. See No. 820 dated 12th June 1905. P.R. No. 40 Punjab Government Orders, p. 19.

(49) Dinapore Cantonment, Rules 196 to 206 of the Cantonment Code 1899 extended to the vicinity of. See Notification No. 2359 Y.—M. dated 3rd Nov. 1900. Cal. Gaz. 1900 Pt. I, p. 1230.

(50) Doranda Cantonment, imposition of taxes in. See Notification No. 2970-M. dated 14th November 1892, Cal. Gaz. of 1892 Part I-B, p. 257.

(51) Dun-Dun Cantonment, Rules 196 to 206 of the Cantonment Code 1899 extended to the vicinity of. See Notification No. 2357 T.—M. dated 3rd November 1900. Cal. Gaz. of 1900 Pt. I, p. 1230.

(52) Ferozepore Cantonment, House Scavenging tax imposed in. See Notification No. 716 dated 9th March 1906. P.R. 41 Punjab Govt. Orders, p. 21.

(53) Ferozepore Cantonment, tax of 1894 abolished in. See Notification No. 715 dated 9th March 1906. P.R. 41 Punjab Government Orders, p. 21.

(54) Ferozepore Cantonment, reduction of house scavenging tax in. See Notification No. 229 dated 23rd January 1907. P.R. 42 Punjab Govt. Orders, p. 4.

(55) Hyderabad, limits of the Cantonment of. See Notification No. 208 dated 17th April 1889. B.G.G. 1889 Pt. I, p. 310, in supersession of G.O.No. 63 dated 6th Feb. 1888.

(56) Jacobabad Cantonment, limits of. See Notification No. 317 dated 3rd June 1890. B.G.G. 1890 Pt. I, p. 517.

(57) Jhelum Cantonment, House Scavenging tax imposed in. See Notification No. 2815-A. dated 20th Dec. 1905. P.R. 40. Punj. Govt. Orders, p. 49.

(58) Jhelum Cantonment, certain provisions of the Cantonment Code extended to. See Notification No. 35 dated 7th Feb. 1907. P.R. 42 Punj. Govt. Orders, p. 6 and 7.

(59) Jullunder Cantonment, certain provisions of Cantonment Code applied to. See Notification No. 435-A. dated 15th Dec. 1905. P.R. 40 Punj. Govt. Orders, p. 49.

(60) Jullunder Cantonment, conservancy tax abolished. See Notification No. 1787 dated 25th June 1906. P.R. 41 Punj. Govt. Orders, p. 75.

(61) Jullunder Cantonment, imposition of House Scavenging tax in. See Notification No. 1786 dated 25th June 1906. P.R. 41 Punj. Govt. Orders, p. 74.

(62) Jullunder Cantonment, certain sections of the Cantonment Code extended to a portion of. See Notification No. 898 dated 15th October 1906. P.R. 41 Punj. Govt. Orders, p. 122.

(63) Jutogh Cantonment, Scavenging tax imposed in. See Notification No. 54 dated 4th January 1906. P.R. 41 Punjab Govt. Orders, p. 1.

(64) Jugegh, Cantonment, abolition of conservancy tax in. See Notification No. 53 dated 4th January 1906. P.R. 41 Punjab Govt. Orders, p. 1.

(65) Karachi Cantonment, applying S. 21 of Bom. Act III of 1867 to certain local areas in Karachi Cantonment. See Notification dated 13th December 1871, B.G.G. 1871 Pt. I, p. 1328.

(66) Karachi, Cantonment, limits of. See Notification No. 155 dated 21st March 1888 B.G.G. 1888, Pt. I, p. 273.

(67) Karachi Cantonment, Bye-laws under S. 272, Cantonment Code extended to. See Notification No. 286 dated 4th Feb. 1904. P.R. 39 Punj. Govt. Orders, p. 3.

(68) Kasauli Magistrate of, appointed ex-officio Sub-Registrar. See Notification No. 16 dated 19th April 1904, P.R. 39 Punj. Govt. Orders, p. 25.

(69) Kasauli Cantonment, tax abolished in. See Notification No. 56 dated 4th January 1906. P.R. 41 Punj. Govt. Orders, p. 2.

(70) Khandala, Cantonment, limits of. See Notification No. 5165 dated 27th Nov. 1895. B.G.G. 1895, Pt. I, p. 1193.

(71) Kirkee Cantonment, comprising the lines of Bombay Sappers and miners and 28th Pioneers at Kirkee, limits of. See Notification No. 535 dated 4th November 1893, B.G.G. 1893 Pt. I, p. 1050 in substitution of G.O.G. No. 192 dated 5th April 1887.

(72) Kirkee, cantonment, limits of. See Notification No. 435 dated 5th September 1894 B.G. 1894 Pt. I, p. 913, in supersession of, G.O.G. No. 595 of 1880.

(73) Latrine-taxes—Exemption from, in cantonments. See G.G.O. (M.D.) No. 191 dated 26th February 1892. Manual of orders of Govt. of the U.P. of Agra and Oudh. XII p. 21.

(74) List of houses appropriated under S. 11 (*d*) of the Cantonment House Accommodation Act. See Notification No. 390 dated 23rd March 1906. P.R. 41, Punjab Govt. Orders, p. 34.

(75) Mian Mir Cantonment, House and conservancy tax imposed in. See Notification No. 1593 dated 6th July 1903. P.R. 38, Punjab Govt. Orders, p. 13.

(76) Modification of order :—See S. 37 (1) Cantonment Code No. 653 dated 26th July 1907. P. R. 42, Supreme Govt. Orders, p. 72.

(77) Modification of the notification of Government of India Military Department No. 664 dated 16th June 1899. See No. 693 dated 9th August 1907. P.R. 42, Supreme Govt. Orders, 72.

(78) Multan Cantonment, provisions of S. 204, Cantonment Code applied to a portion of. See Notification No. 1168 dated 11th Oct. 1904. P.R. 39, Punjab Govt. Orders, p. 56.

(79) Mulkair District, S. 204 Cantonment Code applied to a portion of. See Notification No. 1104 dated 11th Nov. 1905. P.R. 40, Punjab Govt. Orders, p. 31.

(80) Murree Cantonment, certain provisions of the Cantonment Code extended to. See Notification No. 100, A dated 29th January 1906. P.R. 41, Punjab Govt. Orders, p. 6.

(81) Murree Cantonment, conservancy tax imposed in. See Notification No. 1205 dated 7th April 1906. P.R. 41, Punjab. Govt. Orders, p. 37.

(82) Murree Cantonment—Imposition of tax on menial servants payable by employers. See Notification No. 1206 dated 7th April 1906. P. R. 41, Punjab Govt. Orders, p. 37.

(83) Murree Cantonment, imposition of water tax in. See Notification No. 1865 dated 2nd July 1906. P.R. 41, Punjab Govt. Orders, p. 87.

(84) Murree Cantonment, certain provisions of Cantonment Code in regard to nuisances and sanitation extended to certain area in. See Notification No. 348 dated 20th Oct. 1906. P. R. 41, Punjab Govt. Orders, p. 122.

(85) Murree Hills. Certain cantonments in, extension of certain provisions of the cantonment Code to. See Notification No. 100 B, dated 29th January 1906. P. R. 41, Punjab Govt. Orders, p. 6.

(86) Murree Municipality, provisions of certain sections of the Cantonment Code extended to. See Notification No. 605 dated 19th July 1907. P.R. 42. Punjab Govt. Orders, p. 57.

(87) Octroi-Exemption from, on green fodder. See G.G.O. (M. D.) No. 164 dated 15th February 1895, Manual of Orders of Govt. U.P. of Agra and Oudh, XII, p. 21.

(88) Poona Cantonment, limits of. See Notification No. 124 dated 4th March 1891. B. G. G. 1891, Pt. 1, 219.

(89) Quarries within cantonments. See G. G. O. No. 776 dated 28th May 1880 and No. 4101 dated 28th December 1880 Manual of Orders of Govt. U.P. of Agra and Oudh. XII p. 25.

(90) Rawalpindi Municipality, provisions of S. 13, Cantonment Act, extended to. See No. 2629 dated 5th October 1906. P.R. 41, Punjab Govt. Orders, p. 117.

(91) Rawalpindi Cantonment, Cantonment House Accommodation Act declared to be operative in. See Notification No. 389 dated 23rd March 1906. P. R., Punjab Govt. Orders, p. 34.

(92) Registration of births and deaths in Cantonment. See G. O. No. 1945—1948 XII 1505 E, dated 7th September 1901 and No. 2666 XII -505 E, dated 5th December 1901. Manual of Orders of Govt. U.P. of Agra and Oudh. XII, p. 25.

(93) Sialkot Cantonment, imposition of house-tax in. See Notification No. 152 dated 18th January 1905 P.R. 40, Punjab Govt. Orders, p. 4.

(94) Sialkot Cantonment, appropriation of some houses for the use of Civil officers in. See No. 1312 dated 19th December 1906, P.R. 41 Punjab Govt. Orders, p. 136.

(95) Sialkot Cantonment, Cantonment House Accommodation Act declared to be operative in. See Notification No. 1211 dated 19th December 1906. P.R. 41, Punjab Govt. Orders, p. 136.

(96) Sialkot Cantonment. alteration in. See Notification No. 1212, dated 19th December 1906. Erratum No. 816 dated 25th September 1907. P.R. 42, Punjab Govt. Orders, p. 64.

(97) Sirur Cantonment, limits of. See Notification No. 86 dated 16th February 1889, B. G. G. 1889, Pt. 1. p. 141.

(98) Soldiers' institutes or houses, exemption, of, from tax on buildings. See Army Department, No. 140 dated 22nd February 1907. P. R. 42, Supreme Government Orders, p. 13.

(99) Substitution of another section in place of S 57 Cantonment Code 1899. See Judicial No. 553 dated 21st June 1907. P. R. 42, Supreme Government Orders, p. 65.

(100) Tax. Exemption from, on cycles. See G. G. O. (M.D.) No. 53 dated 21st January 1898. G. O. No. 620 XII-549-D, dated 18th March 1902. Manual of Orders of Government, U. P. of Agra and Oudh. XII, p. 22.

(101) Tax, mode of calculation of. See G. G. O. (M. D.) No. 828 dated 31st August 1894. Manual of Orders of Government, U. P. of Agra and Oudh. XII, p. 23.

(102) Tax, exemption from, for unoccupied buildings. See G. G. O. (M. D.) No. 215 dated 25th February 1898; No. 827 dated 31st August 1894. See G. G. O. (M. D.) Nos. 827, 828 dated 31st August 1894. Manual of Orders of Government U. P. of Agra and Oudh. XII, p. 22.

(103) Tax, exemption from, for drivers and artificers. See G. O. No. 1979 XII-485 C, dated 20th December 1894. Manual of Orders of Government, U. P. of Agra and Oudh. XII, p. 21.

(104) Taxation—Miscellaneous rulings. See G. O. No. 684 XII-485 C, dated 15th May 1894. Manual of Orders of Government U. P. of Agra and Oudh. XII, p. 23.

(105) Taxation in Cantonments. See G. O. No. 3101 dated 4th September 1882. Manual of Orders of Government, U. P. of Agra and Oudh. XII, 20.

(106) Taxation, imposition or revision of. See G. O. No. 734 XII-338 C, dated 3rd June 1891. Manual of Orders of Government, U. P. of Agra and Oudh. XII, p. 21.

(107) Exemption from certain taxes in Cantonments. See G. G. O. (M. D.) No. 163 dated 18th November 1881. Manual of Orders of Government, U. P. of Agra and Oudh. XII, p. 21.

(108) Transfer of lands, application for, in cantonments to civil departments. See G. G.O. No. 2646 (M.W.) dated 7th September 1894. Manual of Orders of Government, U. P. of Agra and Oudh. XII, p. 24.

(109) Umballa Cantonment, provisions of S. 143 Punjab Municipal Act extended to. See No. 658 dated 8th July 1904. P. R. 39. Sup. Govt. Orders, p. 12.

(110) Water rate, levy of. See G. G. O. (M. D.) No. 731 C, dated 25th April 1898 Manual of Orders of Govt. U. P. of Agra and Oudh. XII, p. 22.

(111) Water rate, exemption from. See G. G. O. No. 1685 C. dated 14th July 1900 G. G. O. M. D.) No. 2246 C, dated 25th November 1899. Manual of orders of Govt. U. P. of Agra and Oudh. XII, p. 22.

(112) Water-rates, recovery of, by Cantonment authorities. See G. L. 21 dated 3rd October 1904, P. R. 39 Acct. Dept. orders, p. 13.

THE CANTONMENT ACT, 1889.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this volume and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S in Brevier Roman denotes the section.

A

Acquisition, of immoveable property at cost of cantonment fund, S. 24, **16.**

Act, commencement of, S. 1, **5.**

Extent of, S. 1, **5.**

Limitation of the operation of the—, S. 33, **30.**

Act XX of 1856, extension of, to certain Cantonments, S. 18, **14.**

Restriction of power of taxation in Cantonments in which, is in force, S. 19, **15.**

Act XXXVI of 1858, liability of Cantonment Officer for damages for not proceeding under, *E*, **30.**

Act V of 1861 (Police Act), S. 34—Area comprised within limits of a Cantonment is a town, S. 12, **11.**

Act III of 1877 (Registration), S. 9—Cantonment not constituted a sub-district or district—Copy of entries in Indexes Nos. I and II to be forwarded to Cantonment Magistrate, S. 32, **30.**

Act IV of 1882 (Tr.P.A.), Ss. 54, 59, 107, 123—Extend to every Cantonment, S. 32, **33.**

Act X of 1882 (Cr.P.C.), Ch. XLIII—Restoration of thing seized, S. 15, **13.**

S. 12—Who shall be Cantonment Magistrate, S. 7, **8.**

S. 17—Subordination of Cantonment Magistrate, S. 7, **8.**

S. 555—Inapplicability to trials of offences against the Act, S. 29, **29.**

Act IX of 1887 (Pro. Sm. C.C. Act), S. 8—Appointment of Additional Judge of Cantonment Court of Small Causes, S. 9, **9.**

S. 15 (3)—Non-applicability to Cantonment Court of Small Causes. S. 8, **9.**

Additional Judge, appointment of, of Cantonment Court of Small Causes, S. 9, **9.**

Agent, receiving or entitled to receive rent is owner, S. 3, **7.**

Owner of house not appointing, *P—R*, **22, 23.**

Alcoholic, liquid obtained by distillation is spirituous liquor, S. 3, **6.**

Alienation, of land for purposes unconnected with the military requirements, *L*, **25, 26.**

Appeal, from conviction by Cantonment Magistrate, *I*, **9.**

Rejection of, to commanding officer without hearing, *X*, **27.**

Appointment, of Contonment Magistrate as Judge of Cantonment Court of Small Causes, S. 8, **9.**

of Additional Judge of Cantonment Court of Small Causes, S. 9, **9.**

Appropriation, of private houses for use of military authorities, *J*, **25**.

Army Act, officer within the meaning of, S. 3, **6**.

Arrest, of persons for unauthorised sale or possession of spirituous liquor, S. 15, **13**.
of unregistered prostitute, *X*, **20**.

Assistant Cantonment Magistrate, jurisdiction of, *D*, **8**.

Authority, defect in, in issue of notice—Effect, *O*, **26**.
to discharge functions assigned by the Acts in Cantonments in presidency towns, S. 30, **29**.

B

Barters, meaning of, *O*, **11**.
Unauthorised, of spiritous liquor or intoxicating drug, S. 13, **11**.

Beer, not a spirituous liquor, *R*, **12**.

Bhang, is intoxicating drug, S. 3, **6**.

Boundary wall, notice to remove, to be issued by whom, *P*, **26**.

Brown sugar, selling, within Cantonment, *S*, **26**.

C

Cancel, power of Cantonment Magistrate to, license, *F*, **21**.

Cantonment, definition of, S. 4, **7**.
Power of Local Government to define limits of, S. 4, **7**.
Extension of enactments and rules to places beyond, S. 28, **28**.
Trial of offences committed beyond limits of, *A*, **29**.
in presidency towns—Authority to discharge functions assigned by the Act, S. 30, **29**.

Cantonments Act, 1867, validity of rules framed under, *U*, **23**.

Cantonment authority, for Cantonments beyond limits of presidency town, S. 4, **7**.
meaning of, S. 6, **7**.
to have management of Cantonment fund, S. 23, **16**.
Failure to pay rent for stall rented from, *E*, **24**.
Power of Civil Courts over, *Z*, **24**.
Protection of, for anything done in good faith under the Act, S. 31, **30**.

Cantonment Committee, constitution of, S. 6, **8**.
Right to sue and be sued, *K*, **25**.

Cantonment divisions, power of Local Government to divide a Cantonment into number of, S. 18, **14**.

Cantonment fund, what sums to be placed to the credit of, S. 21, **15**, **16**.
applicable to what purposes, S. 21, **16**.
Custody of, S. 22, **16**.
Vesting and management of, S. 23, **16**.
Acquisition of immoveable property at cost of, S. 24, **16**.
deemed to be public revenues within the meaning of Land Acquisition [Act, S. 24, **16**.

Cantonment Magistrate, see ACT III OF 1877.
for Cantonments beyond limits of presidency town, S. 4, **7.**
Subordination of, S. 7, **8.**
Who shall be a, S. 7, **8.**
Power of District Magistrate to try offences triable by, *C*, **8.**
Validity of summary trial by, *E*, **8.**
Jurisdiction of, *F*, **8.**
High Court's power to transfer case from the file of, *G*, **8.**
Appointment of, as Judge of Cantonment Court of Small Causes, S. 8, **9.**
Power to try European British subject, *H*, **9.**
Appeal from conviction by, *I*, **9.**
Jurisdiction of Small Causes, *J—M*, **10.**
Continuance of jurisdiction of, notwithstanding reduction of jurisdiction of Judge, S. 11, **10.**
Power of, to issue order on his own initiative, *M*, **26.**
Cantonment Officer, liability for damages, *E*, **30.**
Cantonment Police, is part of the general police establishment. S. 12, **10, 11.**
Cantonment Regulations, resumption of ground granted under, *I*, **25.**
Carriage fee, failure to pay, *Q*, **26.**
Cattle, taking deceased, to public slaughter house, S. 23.
Cattle Trespass Act, 1871, local authority as defined in, is cantonment authority, S. 6, **8.**
Charas, is intoxicating drug, S. 3, **6.**
Chemist, saving of articles sold or supplied to, from seizure and confiscation, S. 16, **13.**
Cholera, not reporting case of, whether an offence, *B*, **20.**
Civil Courts, power of, over Cantonment authorities, *Z*, **24.**
Clothes, washing of, in a tank when an offence, *V*, **23.**
Commanding officer, rejection of appeal to, without hearing, *X*, **27.**
Protection of, for anything done in good faith under the Act, S. 31, **30.**
Commencement, of Act, S. 1, **5.**
Common gaming house, meaning of, *C*, *D*, **21.**
Compound, See HOUSE.
Condition, in license opposed to rules—Validity, *F*, **25.**
Confiscation, of spirituous liquor etc., for unauthorised sale or possession, S. 15, **13.**
of thing seized—Power of Court to order, S. 15, **13.**
Construction, of enactment or document, S. 2, **5.**
Contagious disease, private individual failing to report a, *W*, **23.**
Copy, of the rules under S. 26 to be kept open to inspection, S. 27, **28.**
Courts, See JUDICIAL COURTS.
Court of Small Causes, appointments of Cantonment Magistrate as Judge of Cantonment, S. 8, **9.**
Appointment of additional Judge of Cantonment, S. 9, **9.**
Judges of existing Cantonment, S. 10, **9.**
Reduction of jurisdiction of Judge, S. 11, **10.**
Custody, of Cantonment fund, S. 22, **16.**

D

Dairy, Starting, without license—Conviction, *T*, **27**.

Damages, Liability of Cantonment Officer for, *E*, **30**.

Declarations, made under repealed enactment—Validity, S. 2, 5 ; *A*, **6**.

Encroachment—Omission to make, *I*, **21**.

Defect, in authority in issue of notice, *O*, **26**.

Directions, given under repealed enactment—Validity, S. 2, **5**.

Dirty, Keeping compound of house in dirty state, *M*, **22**.

Disqualification, See JUDGE, MAGISTRATE.

Circumstances creating, of Judge to be explained, *C*, **29**.

District Magistrate, Cantonment Magistrate subordinate to, S. 7, **8**.

Power to try offence triable by Cantonment Magistrate, *C*. **8**.

Divisions, See CANTONMENT DIVISIONS, S. 18, **14**.

Document, referring to any enactment repealed by the Act—Construction, S. 2, **5**.

Druggist, Saving of articles sold or supplied to, from seizure and confiscation, S. 16. **13**.

Drum, Beating of, on public road whether an offence, *Z*, **20**.

Duty, of Magistrate initiating prosecution before trying accused, *Y*, **27**.

E

Enactment, referring to any enactment repealed by this Act—Construction, S. 2, **5**.

referring to any enactment repealed by any enactment repealed by this Act, S. 2, **5**.

Extension of, to places beyond Cantonments, S. 28, **28**.

Encroachment, Omission to make declaration—Validity, *I*, **21**.

Epidemic, Private individual failing to report an, *W*, **23**.

European British subject, Cantonment Magistrate's power to try, *H*, **9**.

Excise Officer, Power of, to arrest for unauthorised sale or possession of spirituous liquor. S. 15, **13**.

Exempt, Power to, taxation, S. 20, **15**.

Extension, of Act XX of 1856 to certain Cantonments, S. 18, **14**.

of enactments to Cantonments, S. 25, **17**.

of enactments and rules to places beyond Cantonments, S. 28, **28**.

Extent, of Act, S. 1, **5**.

F

Fine, Additional, in Rule 2 framed under S. 26, when to be imposed, *W*, **19**.

and imprisonment in default cannot be ordered simultaneously, *V*, **28**.

Prospective daily, for failure to comply with order, *Z*, **28**.

Fowl-run, Lattice work created as, in the compound of a house is not a house, *K*, **22**.

G

Gaming, in public place when an offence, *E*, **21**.

Gaming house, See COMMON GAMING HOUSE, *C*, *D*, **21**.

Ganja, is intoxicating drug, S. 3, **6**.

General, Rules under S. 26 may be, for all cantonments, S. 27, **28**.

General Clauses Act 1868, Applicability of, to rules made under this Act, S. 3, **7.**
——————1887, Applicability of, to rules made under this Act, S. 3, **7.**
Local authority as defined in, is Cantonment authority, S. 6, **8.**
Grant, Resumption of, of land granted under Cantonment regulations, *H*, **25.**

H

Hackney, Carriage-fee—failure to pay, *Q*, **26.**
High Court, Power of, to transfer case from the file of Cantonment Magistrate, *G*, **8.**
House, Lattice work erected as fowl-run in the compound of a house is not a, *K*, **22.**
Keeping compound of, in dirty state, *M*, **22.**
Neglect to repair, *N*, **22.**
Owner of, not appointing agent, *P—R*, **22, 23.**

I

Illegal notice, See NOTICE.
Immoveable property, Acquisition of, at cost of Cantonment fund, S. 24, **16.**
Imprisonment, Fine and, in default cannot be ordered simultaneously, *V*, **28.**
Indian Telegraph Act, Local authority as defined in, is cantonment authority, S. 6, **8.**
Inspection, Copy of rules to be kept open to, free of charge, S. 27, **28.**
Intoxicating drug, meaning of, S. 3, **6.**
Unauthorised sale of, S. 13, **11.**
supplied to medical practitioner, chemist or druggist, S. 16, **13.**

J

Judge, Appointment of Cantonment Magistrate as, of Cantonment Court of Small Causes, S. 8, **9.**
of existing Cantonment Courts of Small Causes, S. 10, **9.**
Member of Cantonment Committee—Not a disqualification to try offences under the Act, S. 29, **29.**
being the Commanding officer of Cantonment is no disqualification to try offences under the Act, S. 29, **29.**
Circumstances creating disqualification to be explained, *C*, **29.**
Judicial Courts, Jurisdiction to interfere in Cantonment cases, *C*, **24.**
Jurisdiction, of Sub-Divisional Magistrate, S. 7, **8.**
of District Magistrate, S. 7, **8.**
of Assistant Cantonment Magistrate, *D*, **8.**
of Cantonment Magistrate, *F*, **8.**
See EUROPEAN BRITISH SUBJECT, *H*, **9.**
Continuance of, of Cantonment Court of Small Causes notwithstanding reduction of jurisdiction of Judge, S. 11, **10.**
of Cantonment Magistrate—Small Causes, *J—M*, **10.**
of Judicial Courts to interfere in Cantonment cases, *C*, **24.**
Trial of offences committed beyond the limits of Cantonment, *A*, **29.**

K

Keeper, of house or place of public resort, meaning of, *L*, **22.**
Keeper of house, meaning of, *L*, **22.**

L

Land, Alienation of land for purposes unconnected with military requirements, *L*, **25**, **26**.

Land Acquisition Act, 1870, S. 6—Cantonment fund is public revenue, S. 24, **16**.

Lattice work,—erected as fowl-run in the compound of a house is not a house, *K*, **22**.

License, Condition in, opposed to rules—Validity, *F*, **25**.

given under repealed enactment—Validity, S. 2, **5**.

Power of Cantonment Magistrate to cancel, *F*, **21**.

Starting dairy without, *T*, **27**.

Limitation, of the operation of the Act, S. 33, **30**.

Limits, Power of Local Government to define, of any Cantonment, S. 4, **7**.

Liquor, See SPIRITUOUS LIQUOR, S. 3, **6**.

Local authority, as defined in Local Authorities Loan Act, Cattle Trespass Act, Telegraph Act, and General Clauses Act, is Cantonment authority, S. 6, **8**.

Local Authorities Loan Act, 1879, Local authority as defined in, is Cantonment authority, S. 6, **8**.

Local limits, defined under repealed enactment, S. 2, **5**.

Regulation fixing, of cantonments and military bazars, S. 2, **5**.

Lock hospital, is not a public place, *H*, **21**.

M

Magistrate, Duty of, initiating prosecution before trying accused, *Y*, **27**.

being the Commanding Officer of Cantonment is no disqualification to try offences under the Act, S. 29, **29**.

member of Cantonment Committee —Not a disqualification to try offences under the Act, S. 29, **29**.

Protection of, for anything done in good faith under the Act, S. 31, **30**.

See CANTONMENT MAGISTRATE.

Management, of Cantonment fund, S. 23, **16**.

Master, supplied by servant with liquor, *P*, **11**.

Liability of, for offence committed by servant, *U*, **27**.

Medical practitioner, Saving of articles sold or supplied to, from seizure and confiscation, S. 16, **13**.

Medicinal purposes, Sale or supply for, S. 16, **13**.

Military, Alienation of land for purposes unconnected with, requirements, *L*, **25**, **26**.

Military authorities, Appropriation of private houses for use of, *J*, **25**.

Milk, Mixing water with, *Y*, **23**.

Municipalities, Cantonments to follow, in taxation, *V*, **14**.

Municipal Taxation Act 1881, Ss. 2, 4, 5—Applicability to area comprised in Cantonment S. 20, **15**.

N

Neglect, to repair house, *N*, **22**.

Notice, Failure to comply with illegal, *A*, *B*, **24**.

by one of two members of sub-committee—Legality, *N*, **26**.

Defect in authority in issue of—Effect, *O*, **26**.

to remove boundary wall to be issued by whom, *P*, **26**.

Notifications, published under repealed enactment, S. 2, **5**.

O

Offence, Not reporting case of cholera whether an, *B*, **20**.
Beating of drum on public road, *Z*, **20**.
Gaming in public place, *E*, **21**.
Failing to construct privy, *J*, **22**.
Keeping compound of house in dirty state, *M*, **22**.
Neglect to repair house, *N*, **22**.
Offensive trade, *N*, **22**.
Owner of house not appointing agent, *P—R*, **22**, **23**.
Taking diseased cattle to public slaughter house, when an, *S*, **23**.
Washing of clothes in a tank, *V*, **23**.
Private individual failing to report epidemic, *W*, **23**.
Failure to report small pox, *X*, **23**.
Failure to comply with illegal notice, *A*, *B*, **24**.
Failure to pay rent for stall rented from Cantonment authority, *E*, **24**.
Selling brown sugar within Cantonment, *S*, **26**.
nature of, contemplated by Cantonment Code, *W*, **27**.
Offensive trade, Prosecution for, *O*, **22**.
Officer, meaning of, S. 3, **6**.
Police Officer not an, *B*, **7**.
Operation, of the Act may be limited, S. 33, **30**.
Opium, is intoxicating drug, S. 3, **6**.
Orders, made under repealed enactment—Validity, S. 2, **5**.
Owner, what the term includes, S. 3, **7**.
of house not appointing agent *P*, *R*, **22**, **23**.

P

Palm-tree, Sap of any kind of, is spirituous liquor, S. 3, **6**.
Permission, necessary for sale of spirituous liquor or intoxicating drug to soldier etc. S. 13, **11**.
Permits, given under repealed enactment—Validity, S. 2, **5**.
Personally interested, Disqualification of Judge, *C*, **29**.
Judge, Revision by Chief Court, *D*, **29**.
Place of public resort, meaning of, keeper of, *L*, **22**.
Police officer, not an officer, *B*, **7**.
Prosecution on report of, *U*, **13**.
Power of, to arrest for unauthorised sale or possession of spirituous liquor, S. 15, **13**.
Possession, Unauthorised, of spirituous liquor, S. 14, **12**.
Presidency towns, Cantonments in—authority to discharge functions assigned by the Act, S. 30, **29**.
Previous conviction, Power to seize and detain spirituous liquor in possession of a person previously convicted, S. 15, **13**.
Private houses, Order for repairing, *D*, **24**.
Appropriation of, for use for military authorities, *J*, **25**.

Privy, Failing to construct, whether an offence, *J*, **22.**

Procedure, Trial of offences committed beyond the limits of Cantonment, *A*, **29.**

Prohibit, Power to, taxation S. 20, **15.**

Prosecution, on report of police officer—Legality, *U*, **13.**

for offensive trade, *O*, **22.**

Duty of Magistrate initiating, before trying accused, *Y*, **27.**

against Cantonment authority, Magistrate and Commanding Officer for anything done under the Act, S. 31, **30.**

Prospective, daily fine for failure to comply with order, *Z*, **28.**

Prostitute, Arrest of unregistered, *X*, **20.**

Unregistered, carrying her trade—Legality, *B*, **29.**

Protection, of Magistrate for anything done under the Act, S. 31, **30.**

of Commanding Officer for anything done under the Act. S. 31, **30.**

of Cantonment authority for anything done in good faith under the Act S. 31, **33.**

Publication, of the rules, S. 27, **27.**

Public place, Meaning of, in Cantonment rules, *G*, **21.**

Lock hospital not a, *H*, **21.**

Public road, Right of Cantonment authorities to forbid use of, *A*, **20.**

Beating of drum on, whether an offence, *Z*, **20.**

Punishment, for breach of rules, S. 27, **28.**

Fine and imprisionment in default cannot be ordered simultaneously, *V*. **28.**

R

Registered prostitute, Breach of Cantonment rules, *V*, **20.**

Registration, of documents for transfers of property in Cantonments, S. 32, **30.**

Regulations, Made under repealed enactment—Validity, S. 2, **5.**

fixing local limits of cantonments and Military bazaars, S. 2, **5.**

Rejection, of appeal to Commanding Officer, *X*, **27.**

Rent, Failure to pay, for stall rented from Cantonment authority, *E*, **24.**

Failure to pay, *R*, **26.**

Repair, Neglect to, house, *N*, **22.**

Order for repairing private houses, *D*, **24.**

Failure to do, not contemplated by Act, *G*, **25.**

Repeal, Extent of, of enactments, S. 2, **5.**

Report, Prosecution on, of police officer, *U*, **13.**

Not reporting case of cholera. *B*, **20.**

Failure to, small-pox. *X*, **23.**

Restoration, of thing seized under S. 15, **13.**

Restriction, of power of taxation, S. 19, **15.**

Resumption, of grant of land granted under Cantonment regulations, *H*, **25.**

Revision, by Chief Court in cases of personal interest, *D*, **29.**

Right to sue, Right of Cantonment Committee to sue, *K*, **25.**

Rules, Made under repealed enactment—Validity. S. 2, **5.**

Matters respecting which, may be made, S. 26, **17—19.**

Breach of cantonment—Registered prostitute, *V*, **20.**

Rules—(Concluded).

Validity of, framed under Cantonments Act, 1867, *U*, **23.**

Condition in license opposed to—Validity, *F*, **25.**

Power to make, under S. 26 subject to certain conditions, S. 27, **27.**

under S. 26 may be general or special, S. 27, **27**, **28.**

Copy of the, shall be kept open to inspection free of charge, S. 27, **28.**

Extension of, to places beyond Cantonments, S. 28, **28.**

S

Sale, Unauthorised, of spirituous liquor or intoxicating drug, S. 13, **11.**

See UNAUTHORISED SALE.

Seizure, of spiritous liquor etc., for unauthorised sale or possession, S. 15, **13.**

Sells, meaning of, *O*, **11.**

Servant, supplying liquor to master, *P*, **11.**

Liability of master for offence committed by, *U*, **27.**

Slaughter house, Taking diseased cattle to public, *S*, **23.**

Small Causes, Jurisdiction of Cantonment Magistrate, *J—M*, **10.**

Small-pox, Failure to report, *X*, **23.**

Soldier, meaning of, S. 3, **6.**

Unauthorised sale etc., of spirituous liquor or intoxicating drug to, S. 13, **11.**

meaning of, *S*, *T*, **12.**

Soldier's wife, Unauthorised sale etc., of spiritious liquor or intoxicating drug to, S. 13, **11.**

Special, Rules under S. 26 may be, for particular Cantonments, S. 27, **28.**

Spirituous liquor, meaning of, S. 3. **6.**

Unauthorised sale of, S. 13, **11.**

meaning of, *Q*, **12.**

Beer not a, *R*, **12.**

Unauthorised possession of, S. 14, **12.**

supplied to medical practitioner, chemist or druggist, S. 16, **13.**

Stallage, Failure to pay, *R*, **26.**

Sub-committee, Notice by one of two members of a, *N*, **26.**

Sub-divisional Magistrate, Cantonment Magistrate subordinate to, S. 7, **8.**

Subordination, of Cantonment Magistrate, S. 7, **8.**

Sugar, See BROWN SUGAR, *S*, **26.**

Suit, against Cantonment authority, Magistrate and Commanding Officer for anything done under the Act, S. 31, **30.**

Summary trail, Validity of, by Cantonment Magistrate, *E*, **8.**

Supply, Unauthorised, of spirituous liquor or intoxicating drug, S. 13, **11.**

meaning of, *P*, **11**, **12.**

T

Tank, Washing of clothes in, when an offence, *V*, **23.**

Tari, is spirituous liquor, *Q*, **12.**

Tax, Power of Local Government to determine nature of, in Cantonment division, S. 18, **14.**

Taxation, Cantonments to follow Municipalities in, *V*, **14**.

General power of, S. 17, **14**.

Restriction of power of, in Cantonments in which Act XX of 1856 is in force, S. 19, **15**.

Power to prohibit or exempt from, S. 20, **15**.

Taxes, imposed under repealed enactment. S. 2, **5**.

Temporary, Construction when an offence, *T*, **23**.

Toddy, is spirituous liquor, *Q*, **12**.

Trade, See OFFENSIVE TRADE.

Transfer, High Court's power to transfer case from the file of Cantonment Magistrate *G*, **8**.

Trial, of offences committed beyond limits of Cantonment. *A* **29**.

U

Unauthorised sale, of spirituous liquor and intoxicating drug, S. 13, **11**.

Unregistered, prostitute carrying her trade—Legality, *B*, **29**.

Unregistered prostitute, Arrest of, *X*, **20**.

V

Vesting, of Cantonment fund, S. 23, **16**.

W

Wall, See BOUNDARY WALL.

Warrant, See ARREST.

Warrant Officer, Person doing military duty as, S. 3, **6**.

Washing, of clothes in a tank when an offence, *V*, **23**.

Water, Mixing, with milk, *Y*, **23**.

Whipping, cannot be awarded under S. 13, *N*, **11**.

Wine, is spirituous liquor, S. 3, **6**.

THE CANTONMENTS ACT, 1910.

CONTENTS.

CHAPTER I

NOTE.

The Cantonments Act has undergone amendments since its publication in July last in Parts II and III of the Lawyer's Companion (Criminal). I have, therefore, printed and sent herewith the Bare Text of the Cantonments Act as amended by Act XV of 1910. The Act, therefore, may now be bound in the following order :—

(1) Title page and contents, pp. 3 and 4 found in Part II.
(2) Bare Text of the Cantonments Act, pp. 1—16 found in Part V sent herewith.
(3) Table of cases pp. 1—4 found in Part III.
(4) Body of the Act, pp. 1—28 in Part II and pp. 29 to 38 found in Part III.
(5) Index pp. 1—10 found in Part III.

12th September, 1910. T. V. SANJIVA ROW.

10. Police.

CHAPTER III.

SPIRITUOUS LIQUORS AND INTOXICATING DRUGS.

11. Unauthorised sale of spirituous liquor or intoxicating drug.
12. Unauthorised possession of spirituous liquor.
13. Arrest of persons and seizure and confiscation of things for offences against the two last foregoing sections.
14. Saving of articles sold or supplied for medicinal purposes.

CHAPTER IV.

TAXATION AND CANTONMENT FUND.

Taxation.

SECTIONS.

15. General power of taxation.
16. Extension of Act XX of 1856 to certain cantonments.
17. Restriction of power of taxation in cantonments in which Act XX of 1856 is in force.
18. Power to prohibit or exempt from taxation.

Cantonment Fund.

19. Cantonment fund.
20. Custody of cantonment fund.
21. Vesting and management of cantonment fund.
22. Acquisition of immoveable property at cost of cantonment fund.

CHAPTER V.

SUPPLEMENTAL PROVISIONS.

23. Extension of enactments to cantonments.
24. Matters respecting which rules may be made.
25. Supplemental provisions respecting rules.
26. Extension of certain enactments and rules to places beyond cantonments.
27. Cantonments in presidency-towns.
28. Protection of Cantonment authority, Magistrate and Commanding Officer.
29. Registration.
30. Limitation of the operation of this Act.

CHAPTER VI.

REPEALS AND SAVINGS.

31. Repeals.
32. Savings.

THE SCHEDULE.—ENACTMENTS REPEALED.

THE CANTONMENTS ACT, 1910.

ACT XV OF 1910.

(Received the assent of the Governor-General on the 5th August, 1910.)

An Act to consolidate and amend certain Acts relating to Cantonments.

WHEREAS it is expedient to consolidate and amend certain Acts relating to cantonments; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title and extent.

1. (1) This Act may be called the Cantonments Act, 1910.

(2) It extends to the whole of British India.

Interpretation.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "officer" means—

(i) a person who, being an officer within the meaning of the Army Act, [44 and 45 Vict., c. 58] is commissioned and in pay as an officer doing military duty with His Majesty's regular forces as defined in that Act or as an officer doing such duty in any arm, branch or part of those forces; and

(ii) a person doing military duty as a warrant officer with those forces or with any arm, branch or part thereof, whether he is or is not an officer within the meaning of the Army Act.

(*b*) "soldier" means a person who is a soldier of His Majesty's regular forces within the meaning of the Army Act, and is not an officer within the meaning of this Act:

(*c*) "spirituous liquor" means any fermented liquor, any wine, any alcoholic liquid obtained by distillation, and the sap of any kind of palm-tree, and includes any other

liquid consisting of or containing alcohol which the local Government, with the previous sanction of the Governor-General in Council, may, by notification in the official Gazette, declare to be a spirituous liquor for the purposes of this Act:

(*d*) "intoxicating drug" means opium, ganja, bhang, charas and every preparation and admixture thereof, and includes any other intoxicating substance or liquid which the local Government, with the previous sanction of the Governor-General in Council, may, by notification in the official Gazette, declare to be an intoxicating drug for the purposes of this Act: and

(*e*) "owner" includes the person who is receiving or entitled to receive the rent of any building or land, whether on his own account or on behalf of himself and others or as an agent or trustee, or who would so receive the rent or be entitled to receive it if the building or land were let to a tenant.

CHAPTER II.

CANTONMENTS AND CANTONMENT AUTHORITIES, COURTS AND POLICE.

Cantonments.

Definition of cantonments.

3. (1) The Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the official Gazette, declare any place in which any of His Majesty's regular forces are quartered within the territories administered by such Government to be a cantonment for the purposes of this Act and of all other enactments for the time being in force.

(2) The Local Government, with the like sanction, may also, by a like notification, define the limits of any cantonment for the like purposes.

Cantonment Authorities and Magistrates.

Cantonment authority and Magistrate.

4. For every cantonment beyond the limits of a presidency-town there shall be a cantonment authority and a Cantonment Magistrate.

Cantonment authority.

5. (1) The expression "cantonment authority" as used in this Act means a cantonment committee or, where a cantonment committee has not been constituted or has in pursuance of an order of the Local Government ceased to exist, or for any reason cannot be convened, then, subject to any rules made under section 24, clause (5), the commanding officer of the cantonment.

(2) The Local Government shall determine, with respect to every cantonment in which troops are for the time being quartered, whether or not a cantonment committee is to be constituted.

(3) The cantonment authority shall be deemed to be a local authority as defined in the Cattle-trespass Act, 1871, [I of 1871] the Local Authorities Loan Act, 1879, [XI of 1879] the Indian Telegraph Act, 1885, [XIII of 1885] and the General Clauses Act, 1897 [X of 1897].

Cantonment Magistrate.

6. The Cantonment Magistrate shall be a Magistrate appointed by the Local Government under section 12 of the Code of Criminal Procedure, 1898, [V of 1898] and, as such, subordinate to the District Magistrate or to the District Magistrate and the Sub-Divisional Magistrate, as the case may be, under section 17 of that code.

Cantonment Court of Small Causes.

Appointment of Cantonment Magistrate as Judge of Cantonment Court of Small Causes.

7. (1) When the Local Government appoints the Cantonment Magistrate to be the Judge of a Court of Small Causes established within a cantonment under the Provincial Small Cause Courts Act, 1887, [X of 1887] it shall, in its order appointing him to be such Judge, declare, and may by notification in the official Gazette vary, within a limit of fivehundred rupees, the value of the suits which are to be cognizable by him under that Act.

(2) The provisions of section 15, sub-section (3), of the said Act shall not apply to a Court of Small Causes of which a Cantonment Magistrate is the Judge.

Appointment of Additional Judge of Cantonment Court of Small Causes.

8. When the Local Government appoints an Additional Judge of a Court of Small Causes, of which a Cantonment Magistrate is the Judge, it shall, in its order appointing him to be such Additional Judge, declare, and may by notification in the official Gazette vary, within a limit of fifty rupees, the value of the suits with respect to which the functions of the Judge of the

Court may be assigned to, and discharged by, the Additional Judge under section 8 of the Provincial Small Cause Courts Act, 1887 [IXof 1887].

Continuance of jurisdiction of Cantonment Court of Small Causes in certain cases notwithstanding reduction of jurisdiction of Judge.

9. A Cantonment Magistrate as Judge of a Court of Small Causes may, whatever may be the value of the suits cognizable by him as such Judge, dispose of any suit which was within the pecuniary limits of the jurisdiction of the Judge presiding over the Court at the time of the institution of the suit, and may entertain and dispose of any proceeding after decree in any such suit.

Cantonment Police.

Police.

10. (1) The police-force employed in a cantonment beyond the limits of a presidency-town shall, for the purposes of the Madras District Police Act, 1859, [XXIV of 1859] or the Police Act, 1861, [V of 1861] or the Bombay District Police Act, 1890, [Bom. IV of 1890] as the case may be, be deemed to be part of the general police establishment under the superintendence of the Local Government in whose territories the cantonment is situated.

(2) The area comprised within the limits of a cantonment shall be deemed to be a town for the purposes of section 34 of the Police Act, 1861 [V of 1861].

CHAPTER III.

SPIRITUOUS LIQUORS AND INTOXICATING DRUGS.

Unauthorised sale of spirituous liquor or intoxicating drug.

11. If within a cantonment, or within such limits around a cantonment as the Local Government may, by notification in the official Gazette, prescribe in this behalf, any person not subject to military law or any person subject to military law otherwise than as an officer or soldier knowingly barters, sells or supplies, or offers or attempts to barter, sell or supply, any spirituous liquor or intoxicating drug to or for the use of any soldier or follower or soldier's wife, without the written permission of the commanding officer of the cantonment or of some person authorised by the commanding officer to grant such permission, he shall be punishable with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

Unauthorised possession of spirituous liquor.

12. If within a cantonment, or within such limits around a cantonment as the Local Government may, by notification in the official Gazette, prescribe in this behalf,—

(a) any person subject to military law otherwise than as an officer or soldier, or

(b) the wife or servant of any such person or of a soldier,

has in his or her possession except on behalf of the Government or for the private use of an officer more than one quart of any spirituous liquor other than fermented malt-liquor without the written permission of the commanding officer of the cantonment or of some person authorized by the commanding officer to grant such permission, he or she shall be punishable in the case of a first offence against this section with fine which may extend to fifty rupees, and in the case of a subsequent offence against this section with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months.

Arrest of persons and seizure and confiscation of things for offences against the two last foregoing sections.

13. (1) Any police-officer or excise-officer may, without an order from a Magistrate and without a warrant, arrest any person whom he finds committing an offence against section 11 or section 12, and may seize and detain any spirituous liquor or intoxicating drug in respect of which such an offence has been committed, and any vessels or coverings in which the liquor or drug is contained

(2) Where a person accused of an offence against section 11 has been previously convicted of an offence against that section, an officer in charge of a police station may, with the written permission of a Magistrate, seize and detain any spirituous liquor or intoxicating drug within the cantonment, or within the limits prescribed under section 11, which at the time of the alleged commission of the subsequent offence belonged to, or was in the possession of, the person.

(3) The Court convicting a person of an offence against section 11 or section 12 may order the confiscation of the whole or any part of anything seized under sub-section (1) or sub-section (2).

(4) Subject to the provisions of Chapter XLIII of the Code of Criminal Procedure, 1898, anything seized under sub-section (1)

or sub-section (2) and not confiscated under sub-section (3) shall be restored to the person from whom it was taken.

Savings of articles sold or supplied for medicinal purposes.

14. The foregoing provisions of this chapter shall not apply to the sale or supply of any article for medicinal purposes by a medical practitioner, chemist or druggist.

CHAPTER IV.

TAXATION AND CANTONMENT FUND.

Taxation.

General power of taxation.

15. (1) With the previous sanction of the Governor-General in Council, the Local Government may, by notification in the official Gazette,—

(*a*) impose in any cantonment which is not included in a Municipality any tax which, under any enactment in force at the date of the notification, can be imposed in any municipality within the territories administered by such Government; and

(*b*) abolish or modify any tax so imposed.

(2) When any tax is leviable in a cantonment in pursuance of a notification under sub-section (1), the Local Government, subject to the like sanction, may, by a like notification, apply or adapt to the cantonment the provisions of any enactment or rules in force at the date of the notification in any municipality within the territories administered by such Government relating to—

(*a*) the assessment, collection or recovery of any tax;

(*b*) the refund or revision of, or exemption from, any such tax; and

(*c*) the punishment of any breach of such enactment or rules.

Extension of Act XX of 1856 to certain cantonments.

16. (1) The Local Government may, by notification in the official Gazette, extend the provisions of the Bengal Chaukidari Act, 1856, to any cantonment which is not included in a municipality and which is situated in any part of British India in which that Act is in force, and the Cantonment Magistrate may exercise all the powers of the Magistrate under that Act, subject only to the control of the District Magistrate and the Local Government.

(2) The Local Government may order that a cantonment to which the provisions of the Bengal Chaukidari Act, 1856 (XX of 1856), have been extended shall be divided into any number of cantonment divisions, and may determine the nature of the tax to be levied in each such division according to section 10 of that Act.

Restriction of power of taxation in cantonments in which Act XX of 1856 is in force.

17. While a tax assessed according to the circumstances, and the property to be protected, of the persons liable thereto, or according to the annual value of houses and grounds, is levied under the Bengal Chaukidari Act, 1856 (XX of 1856), in a cantonment, a tax on persons practising any profession or art or carrying on any trade or calling or a tax on buildings and lands, as the case may be, shall not be leviable in the cantonment in pursuance of a notification under section 15 of this Act.

Power to prohibit or exempt from taxation.

18. (1) Notwithstanding anything in any enactment for the time being in force, the Governor-General in Council may, by notification in the *Gazette of India*, prohibit the levy of the whole or any part of any tax imposed in a cantonment, or exempt any person by name or in virtue of his office or any class of persons, or any property or any class of property, from the operation of any such tax.

(2) Where the area subject to the authority of a municipal committee as defined in section 2 of the Municipal Taxation Act, 1881 (XI of 1881), includes the whole or part of a cantonment, nothing in section 4 or section 5 of that Act or in any other like enactment for the time being in force shall apply to so much of that area as is comprised in the cantonment.

Cantonment Fund.

Cantonment fund.

19. (1) There shall be formed for every cantonment which is not included in a municipality a cantonment fund, and there shall be placed to the credit thereof, among other sums, the following, namely:—

(*a*) subject to deductions under section 545 of the Code of Criminal Procedure, 1898 (V of 1898), or under any other enactment for the time being in force or under any order of the Local Government, all fines recovered from persons convicted of offences committed within the cantonment against this Act or against any enactment extended or

rule made thereunder, or against the provisions of section 34 of the Police Act, 1861 (V of 1861), or the corresponding enactment for the time being in force in the territories administered by the Governor of Fort St. George in Council or by the Governor of Bombay in Council, or against the provisions of Chapter XIII or Chapter XIV of the Indian Penal Code [XLV of 1860], or of section 156 of the Army Act [44 & 45 Vict. C. 58]

(*b*) the proceeds of taxes imposed under section 15 or levied under the Bengal Chaukidari Act, 1856 [XX of 1856], in the cantonment; and

(*c*) rents and profits accruing from property placed by the Government under the management of the cantonment authority.

(2) Notwithstanding anything in any enactment as to the purposes to which the proceeds of a tax or to be appropriated, the cantonment fund shall be applicable, subject to the rules under this Act, to the maintenance of the police-force employed in the cantonment and to the other purposes of this Act within the cantonment and, with the general or special sanction of the Local Government, to like objects, within or without British India, beyond the limits of the cantonment in cases in which, in the opinion of the Local Government, the application of the fund beyond those limits is for the benefit of the inhabitants of the cantonment or of any military force ordinarily quartered therein or of any detachment of any such force.

Custody of cantonment fund.

20. (1) Where, in or near a cantonment, there is a Government treasury or sub-treasury or a bank to which the Government treasury business has been made over, the cantonment fund shall be kept in the treasury, sub-treasury or bank.

(2) Where there is no such treasury, sub-treasury or bank, the cantonment fund may be deposited with any banker or person, acting as a banker, who has given such security for the safe custody and repayment on demand of the fund so deposited as the District Magistrate may in each case think sufficient.

Vesting and management of cantonment fund.

21. The cantonment fund shall be vested in His Majesty, and, subject to the provisions of this Act and of the rules thereunder and to the control of the Local Government, the management of the fund shall be entrusted to the cantonment authority.

Acquisition of immoveable property at cost of cantonment fund.

22. The cantonment fund shall be deemed to be "public revenue" within the meaning of the proviso to section 6 of the Land Acquisition Act, 1894 [I of 1894], and any property acquired at the cost of the cantonment fund shall vest in His Majesty.

CHAPTER V.

SUPPLEMENTAL PROVISIONS.

Extension of enactments to cantonments.

23. The Governor-General in Council may, by notification in the Gazette of India, extend to all cantonments or to any cantonment or to any part of any cantonment any enactment for the time being in force, in any municipality in British India, and declare its extension to be subject to such restrictions and modifications, if any, as he thinks fit.

Matters respecting which rules may be made.

24. The Governor-General in Council may make rules consistent with this Act to provide for all or any of the following matters, namely:—

(1) the manner in which, and the authority to which, application for permission to occupy land belonging to the Government in a cantonment is to be made;

(2) the conditions to be annexed to every such permission given in pursuance of such an application;

(3) the preparation and maintenance of registers of immoveable property in cantonments;

(4) the constitution of cantonment committees, the functions to be discharged by them, the conduct of, and the control to be exercised over, their proceedings, and the division of duties among the members of such committees;

(5) the functions to be discharged by the commanding officer of a cantonment where a cantonment committee has not been constituted, or has in pursuance of an order of the Local Government ceased to exist, or for any reason cannot be convened;

(6) the executive duties of the Cantonment Magistrate and his position in relation to the commanding officer of the cantonment;

(7) the purposes to which the cantonment fund may be applied;

(8) the authority on which money may be paid from the cantonment fund;

(9) the investment of any balance of that fund;

(10) the execution of contracts by, or on behalf of, the cantonment authority;

(11) the accounts to be kept by the cantonment authority, and the manner in which those accounts are to be audited and published;

(12) the definition and abatement of nuisances for which sufficient provision has not, in the opinion of the Governor-General in Council, been made under section 23;

(13) the requisitions which may be made on persons having the control of sewers, drains, latrines or other things creating, or likely to create, nuisances, and the mode of enforcing such requisitions;

(14) the prevention of the overcrowding of buildings and places in a cantonment;

(15) the construction and maintenance, to the satisfaction of the cantonment authority, of buildings and of boundary walls, hedges and other fences;

(16) the regulation of the practice of agriculture and irrigation in a cantonment, the keeping of lands therein in proper order, and the felling, lopping and trimming of trees on such lands;

(17) the regulation of encamping-grounds, sarais, markets and slaughter-houses, of traffic on roads and across unenclosed spaces under the control of the cantonment authority, and of processions and public assemblies;

(18) the use and management of burial and burning grounds;

(19) the supervision and the regulation of the use of public wells, tanks, rivers, streams, springs or other sources from which water is or may be made available for public use, and of the lands in the vicinity thereof;

(20) the parts of a cantonment in which persons practising any profession or carrying on any trade, calling or occupation may be required to reside for the purpose of practising the profession or carrying on the trade, calling or occupation, and the conditions, if any, to be observed by such persons;

(21) the prevention of the spread of infectious or contagious disorders within a cantonment, and the appointment and regulation of hospitals or other places within or without a cantonment for the reception and treatment of persons suffering from any disease;

(22) the segregation in, or the removal and exclusion from, a cantonment, or the destruction of animals suffering or supposed to be suffering from any infectious or contagious disease;

(23) the suppression of mendicancy and of loitering or importuning for the purpose of prostitution, and the removal and exclusion from a cantonment of disorderly persons, of persons who have been convicted of any offence against Chapter XVII of the Indian Penal Code (XLV of 1860), or section 156 of the Army Act, (44 & 45 Vict., C. 58), or have been ordered under the Code of Criminal Procedure, 1898 (V of 1898), to execute a bond for their good behaviour, and of persons whom the commanding officer deems it expedient to exclude from the cantonment with or without assigning any reason for excluding them therefrom;

(24) the prevention of cruelty to animals and the care of animals while grazing;

(25) the prevention and extinction of fires;

(26) the registration of births and deaths;

(27) the appointment by owners of buildings and lands in cantonments, who are absent from cantonment, of persons residing within or near cantonments, to act as their agents for all or any of the purposes of this Act or any enactment extended or rule made thereunder;

(28) the powers of inspection, entry and search which may be exercised in carrying out any of those purposes, and the cases in which breaches of enactments extended or rules made under this Act are to be cognizable offences;

(29) the mode in which summonses, notices, requisitions and other, documents are to be served on the persons to whom they are addressed;

(30) the cases, authorities and conditions in, to and on which executive orders passed under this Act or any enactment extended or rule made thereunder may be appealed from; and

(31) generally, the carrying out of the purposes of this Act.

Supplemental provisions respecting rules.

25. (1) The power to make rules under section 24 is subject to the condition of the rules being made after previous publication and of their not taking effect until they have been published in the Gazette of India and in such other manner as the Governor-General in Council prescribes.

(2) A rule under section 24 may be general for all cantonments in British India or for all cantonments not expressly excepted from its operation, or may be special for the whole or any part of any one or more than one cantonment, as the Governor-General in Council directs.

(3) A copy of the rules for the time being in force in a cantonment shall be kept open to inspection free of charge at all reasonable times in the office of the Cantonment Magistrate.

(4) In making any rule under clause (12) or any of the following clauses of section 24, the Governor-General in Council may direct that a breach of it shall be punishable with fine which may extend to fifty rupees, or with imprisonment for a term which may extend to eight days, and, when the breach is a continuing breach, with fine which, in addition to such fine or imprisonment as aforesaid, may extend to five rupees for every day after the first during which the breach continues.

Extension of certain enactments and rules to places beyond cantonments.

26. The Local Government may, by notification in the official Gazette, and subject to any conditions as to compensation or otherwise which it may see fit to impose, extend to any area beyond the cantonment and in the vicinity thereof—

(*a*) any enactment which, with or without restriction or modification, has been extended to the cantonment or any part thereof under section 23; or

(*b*) any rule in force in the cantonment or any part thereof under clause (12) or any of the following clauses of section 24, as well as any direction there in force under sub-section (4) of section 25;

and the enactment, rule or direction specified in the notification shall so long as the notification remains uncancelled, apply to that area as if the area were included in the cantonment.

Cantonments in presidency-towns.

27. Where a cantonment is situated within the limits of a presidency-town, the functions assigned to any authority by this Act or any enactment extended or rule made thereunder shall, subject to the provisions of any enactment for the time being in force, be discharged by such authority as the Local Government may appoint in this behalf.

Protection of enactment authority, Magistrate and Commanding officer.

28. A suit or prosecution shall not be entertained in any Court against any cantonment authority, authority appointed under section 27, Cantonment Magistrate or commanding, medical or other officer for anything in good faith done or purporting to be done in pursuance of powers conferred by or under this Act on such

authority, Magistrate or officer, whether the thing done was or was not authorised by the powers so conferred.

Registration.

29. (1) Section 54, paragraphs 2 and 3, and sections, 59, 107 and 123 of the Transfer of Property Act, 1882 [IV of 1882], with respect to the transfer of property by registered instrument, shall, on and from the commencement of this Act, extend to every cantonment in British India.

(2) Where a cantonment has not been constituted a sub-district or district for the purposes of the Indian Registration Act, 1908 [XVI of 1908], under section 9 of that Act, the Registrar of the district in which the cantonment is situated shall cause a copy of such entries in Indexes Nos. I and II as relate to immoveable property within the limits of the cantonment to be forwarded to the Cantonment Magistrate annually or at such shorter intervals as the Local Government may prescribe.

Limitation of the operation of this Act.

30. The Governor-General in Council may, by notification in the Gazette of India, exclude from the operation of the whole or any part of this Act the whole or any part of any cantonment.

CHAPTER VI.

REPEALS AND SAVINGS.

Repeals.

31. The enactments mentioned in the Schedule are repealed to the extent specified in the fourth column thereof.

Savings.

32. All licenses and permits given under the Cantonments Act, 1889 [XIII of 1889], or under any enactment repealed by that Act, and in force at the commencement of this Act, shall be deemed to have been given under this Act.

THE SCHEDULE.

ENACTMENTS REPEALED.

(See Section 31.)

Year.	Number.	Short title.	Extend of repeal.
1	2	3	4
1889	XIII	The Cantonments Act, 1889 ...	So much as has not been repealed.
1891	I	The Cattle-trespass Act (1871) Amendment Act, 1891.	Section II.
1891	XII	The Amending Act, 1891 ...	So much of Part I of the Second Schedule as relates to the Cantonments Act, 1889.
1896	XII	The Excise Act, 1896 ...	So much of the Schedule as relates to the Cantonments Act, 1889.
1897	XV	The Cantonments Act, 1897 ...	The whole.
1898	V	The Code of Criminal Procedure, 1898.	So much of Schedule I as relates to the Cantonments Act, 1889.
1903	I	The Repealing and Amending Act, 1903.	So much of Part II of the Second Schedule as relates to the Cantonments Act, 1889.
1909	V	The Amending (Army) Act, 1909.	So much of the Schedule as relates to the Cantonments Act, 1889.

THE LAWYER'S COMPANION SERIES.

THE WHIPPING ACT, 1909

(ACT IV OF 1909)

(WITH THE CASE-LAW THEREON)

BY

T. V. SANJIVA ROW,

FIRST GRADE PLEADER, TRICHINOPOLY.

(AUTHOR OF A "DIGEST OF PRIVY COUNCIL RULINGS,"
THE "CURRENT INDEX OF INDIAN CASES,"
THE "LAWYER'S REFERENCE,"
AND
THE "INDIAN EVIDENCE ACT.")

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THE WHIPPING ACT, 1909.

TABLE OF CONTENTS.

SECTIONS.

1. Short title and extent.
2. Whipping added to punishments described in Act XLV, 1860.
3. Offences punishable with whipping in lieu of other punishment.
4. Offences punishable with whipping in lieu of or in addition to other punishment.
5. Juvenile offenders when punishable with whipping.
6. Special proviso as to punishment with whipping in frontier districts.
7. Amendment of S. 392, Act. V, 1898.
8. Repeals.

THE WHIPPING ACT, 1909.

TABLE OF CASES NOTED IN THIS ACT.

			PAGE
		I. L. R. Allahabad Series.	
6 A 482	...	Queen-Empress v. Din Ali ...	16
11 A 308	...	——— v. Sheodin ...	6
21 A 25	...	——— v. Ram Baran Singh ...	6
		I. L R. Bombay Series.	
16 B 357	...	Queen-Empress v. Dagadu ...	13, 14
		I. L. R. Madras Series.	
5 M 158	...	Badiya v. The Queen ...	6
26 M 465	...	Meyyan v. Emperor ...	8
31 M 84	...	The Public Prosecutor ...	10
		The Allahabad Weekly Notes.	
A W N (1881) 138	...	Empress v. Jiva Ram ...	8
		The Bombay High Court Reports.	
3 B H C R Cr 37	...	Reg. v. Yella Valad Parshia ...	13
5 B H C R 83	...	—— v. Genu Bin Aku ...	6
7 B H C R 70 (Cr)	...	—— v. Kusa Lakshman ...	14
8 B H C R Cr 9	...	—— v. Muhumad Ali Valad Abdul Ali ...	16
		The Bombay Law Reporter.	
4 Bom L R 436	...	Emperor v. Jaiwant ...	14
4 Bom L R 929	...	——— v. Jagannath Sagar ...	12
		Ratanlal's Unreported Criminal Cases.	
Rat Unrep Cr Cas 78	...	Reg. v. Jeykison ...	15
Rat Unrep Cr Cas 131	...	Queen-Empress v. Tharekhan ...	12
Rat Unrep Cr Cas 136	...	——— v. Mahadhu ...	7
Rae Unrep Cr Cas 564	...	——— v. Dagdu ...	12
Rat Unrep Cr Cas 803	...	——— v. Habla Sola ...	8
Rat Unrep Cr Cas 906	...	——— v. Abdulla ...	8, 13
		The Calcutta Weekly Notes.	
14 C W N cxxiv	...	——— ...	16
		The Bengal Law Reports.	
7 B L R 165	...	Maniruddin v. Gaur Chandra Shamadar ...	6

		PAGE
Sutherland's Weekly Reporter.		
3 W R 36 (Cr) ...	Queen v Junghoo Khan ...	13
20 W R 72 (Cr) ..	Hur Chundra Kulal v. Jafer Ali ...	8
The Madras High Court Reports.		
3 Mad H C Ap 1 ...	——— ——— ...	10
5 M H C R Ap 1 ...	——— ..	15
5 M H C R Rul xviii ...	——— ...	6
The Madras Law Journal.		
17 M L J 555 ...	The Public Prosecutor ...	10
The Madras Law Times.		
3 M L T 31 ...	The Public Prosecutor ...	10
Weir's Criminal Rulings.		
1 Weir 845 ...	H. C Proceedings, 10th March 1880, No. 456 ...	7
2 Weir 267 ...	H. C. Proceedings, 21st October 1878, No. 1737 ...	14
2 Weir 446 ...	H. C. Proceedings, 7th February 1880 ...	8
2 Weir 447 ...	Meyyan ...	11
2 Weir 449 ...	Karat Ahamed ...	7
2 Weir 487 ...	Mahadeva Iyer ...	11
The Central Provinces Law Reports.		
5 C P L R 31 ...	Empress v. Sada Ganda ...	10
6 C P L R 34 ...	——— v. Thusku ...	10
6 C P L R 36 ...	——— v. Padan Singh ...	13
7 C P L R 32 Cr ...	——— v. Lalji Kori ...	16
14 C P L R 64 ...	Emperor v. Gulab Musalman ...	10
The Punjab Record.		
54 P R 1866 (Cr) ...	The Crown v. Goolab ...	8
82 P R 1866 (Cr) ...	Ramjas v. Sukhram ...	9
22 P R 1872 (Cr) ...	The Crown v. Durrab ...	6
31 P R 1878 (Cr) ...	The Crown v. Ranja ...	8
34 P R 1880 (Cr) ...	The Empress v. Man ...	8
3 P R 1884 (Cr) ...	Jiwan v. Empress ...	16
8 P R 1885 (Cr) ...	Empress v. Sewak ...	13
29 P R 1885 (Cr) ...	——— v. Uttam ...	13
5 P R 1886 (Cr) ...	Bura v. Empress ...	7
10 P R of 1889 ...	Empress v Chetu ...	11
11 P R 1889 ...	Nathu v. Empress ...	10
11 P R 1901 ...	Crown v. Barkat ...	7
33 P R 1901 (Cr) ...	Chhujju v. The Emperor of India ...	11
The Punjab Law Reporter.		
2 P L R 276 ...	The Crown v. Barkat Ali ...	7
3 P L R 170 ...	The Crown v. Rura ...	11
The Burmah Law Reporter.		
1 Bur 399 ...	Nga Po Tun v. Emperor ...	7
7 Burma 82 ...	——— ...	8

				PAGE
		The Lower Burma Rulings.		
1 L B R 202	...	Crown v. Po Thit	...	7
1 L B R 362	...	——-- v. Po Maung	...	15
3 L B R 30	...	King-Emperor v. Haw Taw	...	16
5 L B R 22	...	————- —— v. Tha kin	...	11,16
		The Criminal Law Journal.		
4 Cr L J 281	...	Emperor v. Nga Po Kyan	...	12
7 Cr L J 5	...	The Public Prosecutor	...	10

THE WHIPPING ACT, 1909.

ACT NO. IV OF 1909.

[*22nd March, 1909.*]

An Act to consolidate and amend the law relating to the punishment of whipping.

WHEREAS it is expedient to consolidate and amend the law relating to the punishment of whipping; It is hereby enacted as follows :—

Short title and extent.

1. (1) This Act may be called the Whipping Act, 1909; and

(2) It extends to the whole of British India inclusive of British Baluchistan and the Santhal Parganas.

(Notes).

General.

Punishment of whipping when and on whom can be inflicted.

(1) The punishment of whipping should not ordinarily be inflicted on adults in cases in which the offender holds a respectable station in life. It is appropriate only in the cases of criminals in the lower order of society and some under very special circumstances involving particular turpitude on the part of the offender; it should not be inflicted in cases of extortion, false evidence or forgery. Govt. of Ind. Jan. 11, 1884. **A**

(2) Generally it should be understood that as an additional punishment, the policy of Government is that whipping should be awarded only when a further deterrent seems really called for, in the interests of public justice. Govt. of Ind. Jan. 11, 1884. **B**

(3) Whipping is a punishment manifestly designed as a reinforcement of the powers of the law for the repression of what are popularly styled "the dangerous classes" and especially when the ordinary punishments having been resorted to, have failed of success. Beng. Govt. Oct. 13, 1887. **C**

(4) Persons holding a respectable position in life or the honest labouring poor when driven by sheer necessity to grain pilfering or similar offence should not be sentenced to whipping, but it is an appropriate punishment in the case of other criminals in the lower order of society especially those who take advantage of seasons of public trouble to pray upon their neighbours. All. Man. 283. **D**

5) Whipping should be avoided in the case of a native of the class known as Bhadro (respectable) convicted of a petty theft on a first conviction. Beng. Govt. Oct. 13, 1887. **E**

Whipping added to punishments described in Act XLV, 1860.

2. In addition to the punishments described in section 53 of the Indian Penal Code, offenders are also liable to the punishment of whipping.

(Notes).

General.

(1) **This Act, a part of Penal Code and Criminal procedure.**

The Indian Penal Code and the Code of Criminal Procedure should be read as if the Whipping Act formed a part of the Penal Code from the date of its enactment. 7 B.L.R. 165. **F**

(2) **Whipping in conviction for two offences.**

Where the accused is convicted at the same time of two offences, he may be punished with whipping. 22 P. R. 1872 (Cr.). **G**

(3) **Whipping, when accused is convicted of more than one offence.**

Where a person is convicted at one time of two or more offences punishable under the I.P.C. the Court has power to sentence the prisoner to rigorous imprisonment in one case and to whipping in the other. 5 M.H.C.R. Rul. XVIII. **H**

(4) **Judgment—What it should contain in cases of whipping.**

Where an accused person is liable to be punished under this Act, the charge must state the liability, and the grounds thereof must be set out in the judgment when the punishment is imposed. 5 M. 158. **I**

(5) **Whipping on person already under very severe sentence.**

A sentence of whipping passed on a person who is already under sentence of death or transportation or penal servitude or imprisonment for more than 5 years is illegal. **J**

(6) **Whipping in addition to imprisonment, legality of.**

Where a prisoner was convicted of house-breaking in order to commit theft and theft, both offences being portions of one continuous criminal act, and was sentenced on one charge to rigorous imprisonment and on the other to whipping, *held* that the sentence of whipping in addition to imprisonment (though not illegal) was contrary to the spirit and intention of the Whipping Act. 5 B.H.C.R. 83. **K**

(7) **Fine cannot be awarded in lieu of whipping.**

A Court has no power under S. 395 Cr.P.C. to raise its sentence of whipping by inflicting a fine. Where the sentence of whipping cannot be carried out, all that the Court can do is either to remit the whipping altogether or to sentence the offender in lieu of such whipping or so much as was not carried out, to imprisonment. The word imprisonment means substantive sentence of imprisonment and not one for default of payment of fine. 11 A. 308. **K1**

(8) **Imprisonment in lieu of whipping, period of.**

Where a prisoner sentenced to whipping is found unfit to undergo such sentence which is consequently commuted to imprisonment, such substituted term of imprisonment should not bring the total term to which such prisoner is sentenced up to a term in excess of the maximum which the Court passing the sentence is competent to inflict. 21 A. 25. **L**

General—(*Continued*).

(9) **Sentence in lieu of whipping, Magistrate's power to award.**

A Magistrate cannot inflict a sentence in lieu of whipping when that sentence together with the substantial sentence is in excess of the maximum which he is competent to inflict. 2 P. L. R. 276; 11 P. R. 1901 (Cr.). **M**

(10) **Imprisonment in lieu of whipping, period of.**

A sentence of imprisonment in lieu of whipping cannot be in addition to the substantive sentence of imprisonment for the maximum term which the Magistrate is competent to inflict under S. 32, Cr. P. C. 2 Weir 449. **N**

(11) **Whipping under the Police Act, legality of.**

A sentence of whipping cannot be passed for an offence under the Police Act. 1 Weir 845. **O**

(12) **Whipping in default of payment of fine.**

Whipping cannot be awarded in default of payment of fine. 5 P. R. 1886 (Cr.) 1 P.L.R. 9. **P**

(13) **Solitary confinement, legality of.**

An award of solitary confinement to a person sentenced to rigorous imprisonment in lieu of whipping is not illegal. 14 P. R. 1899 (Cr.). **Q**

(14) **Whipping, double sentence of, legality of.**

Where the accused was convicted under Ss. 454 and 380, I.P.C., and sentenced to imprisonment and whipping at 15 stripes for each offence, *held* that the legality of double sentence of whipping was doubtful and whipping was reduced to 15 stripes for both the offences. Bom. Cr. Rg. 7 of 1898. **R**

(15) **Whipping for attempt to commit an offence, legality of.**

A sentence of whipping cannot be passed for an attempt to commit an offence which is punishable with whipping under the Act. 1 Bur. 399, 531. **S**

(16) **Whipping, discretion of Magistrate to remit.**

Where whipping cannot be inflicted, the only sentence which can be passed in lieu thereof is one of imprisonment and not fine, but it is within the discretion of a Magistrate to remit the sentence of whipping. 1 L.B.R. 202. **T**

(17) **Whipping not executed by escape of prisoner, liability after re-capture.**

When a prisoner escapes from jail during the period of 15 days in which execution is suspended, the whipping may be inflicted on his re-capture. M.H.C. Pro. Aug. 10, 1874. **U**

(18) **Whipping not executed at the proper time, liability of prisoner.**

The officer responsible for the infliction of the punishment of whipping should inflict it immediately on the expiration of the time given for it. If through accident or neglect or wilful breach of duty, this direction is not obeyed the prisoner is not thereby freed from his liability. The sentence still subsisting must be executed. The jailor should if the warrant cannot be executed make a return to that effect to the Court whence the warrant issued. Rat. Unrep. Cr. Cases. 136. **V**

General—(*Continued*).

(19) Whipping postponed to a future date, validity of.

(*a*) In passing sentence of whipping along with imprisonment a Deputy Magistrate ordered that, at the termination of the imprisonment, the prisoner should be brought before him for whipping being carried out, *held*, that the sentence of whipping had become inoperative and incapable of being carried out. 20 W.R. 72 (Cr.); 54 P. R. 1866 (Cr.). **W**

(*b*) A sentence of whipping delayed beyond the period prescribed by the Cr. P. C., cannot be legally carried into effect. 2 Weir 446; 34 P.R. 1880 (Cr.). **X**

(*c*) It is only where whipping is added to imprisonment in an appealable case that the whipping may and ought to be postponed under S. 391 of the Cr. P.C. 26 M. 465. **Y**

(*d*) Where an accused was convicted at one trial of two offences and sentenced to separate imprisonment for each and also to whipping for the 2nd and the sentences were directed to be consecutive, *held*, that the sentence of whipping ought not to be delayed until the expiry of the first sentence but should be carried into execution in accordance with the provisions of S. 391, C.P.C., as the word sentence in that section means the total of punishment inflicted at one trial. Rat. Unrep. Cr. Cases. 803. **Z**

(*e*) Execution of sentence of whipping cannot be postponed to a future day and the Court is empowered only to fix the place and time for the execution. Rat Unrep. Cr. Cases. 906. **A**

(*f*) It is not legal to postpone a sentence of whipping to the end of a considerable term of imprisonment. The direction in S. 390, Cr.P.C., is intended for the case where the accused is not already under another sentence and is not at the same time sentenced to imprisonment. When he is also sentenced to imprisonment, S. 391, Cr.P.C., applies. If, where the sentence of whipping is passed, the accused is already undergoing imprisonment in another case, direction should be given to inflict the whipping on the analogy of S. 391, Cr. P.C., as far as possible. 7 Burma, 82. **B**

(*g*) It is imperative to carry out a sentence of whipping in addition to imprisonment immediately on the expiry of 15 days from the date on which it was passed unless an appeal be made within that time. 31 P.R. 1878 (Cr.). **C**

(*h*) Where in the same trial, whipping is imposed for one distinct offence and imprisonment for another, the immediate execution of the sentence of whipping is not illegal. 2 Weir 446. **D**

(*i*) Where whipping is the sole punishment, arrangement should be made to have it carried out at once at the Magistrate's office, in communication with Civil Surgeon or native doctor of the station. Bengal Govt. Or. 21—1—1876. **E**

(*j*) Where a Sessions Judge sentenced the accused to one year's rigorous imprisonment and to receive 30 stripes a week before his release, the High Court ordered the whipping to be inflicted at once. A.W.N. (1881) 138. **F**

General—(*Continued*).

(20) **Whipping, place of execution.**

(*a*) Whipping should never be inflicted in public or in front of the Court-house but always within some walled enclosure and in the presence of a Magistrate or the Superintendent of a jail and when practicable of a medical officer. Panj. Bk. Cir. Vol. 2, S.L.V., p. 269. **G**

(*b*) Where sentence of whipping is the sole punishment it shall be executed at the Court-house or in some suitable place adjacent thereto at a fixed time at the close of each day in the presence of a Magistrate or other officer as provided in Cr.P.C. and with as much privacy as the circumstances permit. All. Gaz. 1878, p. 718, Bk. Cir., p. 36. **H**

(*c*) In Bengal a sentence of whipping shall be executed in the presence of the superintendent of the jail and medical officer or medical subordinate and where the sentence is of whipping only it shall not be executed at the jail except at the Presidency or Alipore jails. Jails rules No. 448. Man. Vol. II, p. 583. **I**

(21) **Whipping, mode of executing.**

(*a*) The number of stripes cannot exceed thirty and the punishment cannot be executed by instalments. 82 P.R. 1866 (Cr.). **J**

(*b*) Whipping is to be inflicted on the buttocks with a rattan not more than 4 feet in length and 1½ inches in circumference. Pan. Bk. Cir. Vol., 2 S.L.V., p. 269. **K**

(*c*) A sentence of whipping shall be inflicted on the breech with a light rattan not exceeding one-half inch in diameter. Precautions should be taken to prevent the blows from falling on any other part of the person. Govt. of Bengal Feb. 29, 1864. **L**

(*d*) Whipping shall be inflicted on the bare back across the shoulders and not in public for a first offence except with the assent of the District Magistrate or Sessions Judge previously obtained. But in every case for which whipping is inflicted as an additional punishment after a previous conviction it will be inflicted in public. Bom. Gaz. Feb. 1, 1893, part 1, p. 110. **M**

(*e*) In Madras, whipping is to be inflicted on the posteriors and care is to be taken that the person undergoing the punishment is tied up to a triangle or his immovability under punishment otherwise secured in order to preclude the possibility of the rattan falling on any other part of the body. Fort St. Geo. Gaz. Notification, 4, 1st Jan. 1883. **N**

(*f*) In Bengal, whipping is to be inflicted on the buttocks for persons over 16 years of age and for juveniles on the buttocks or on the hand as the Court may direct. Beng. Govt. Aug. 18, 1893; Cal. Hct. Rules, etc. pp. 62—64. **O**

(*g*) In Bombay, whipping is to be inflicted on the bare back across the shoulders and in the case of persons under sixteen years of age in private and with a light rattan on the bare buttocks. Bom. Gaz. 1883, pt. I, p. 102. Man. p. 390; Bom. Gaz. 1898 pt. 1, p. 827. **P**

(*h*) In the United Provinces and in the Punjab, whipping is to be inflicted on the buttocks and in Burma on the breech. All. Man. p. 277; Panj. Bk. Cir. Vol. 2, p. 269; Burmah Gaz. 1891 Pt. I, p. 281; Man. p. 106. **Q**

General—(*Continued*).

(*i*) After the execution of the sentence of whipping the fact should be endorsed on the back of the warrant but the warrant should be retained until the term of imprisonment has expired or if the prisoner dies during the course of that term it should be returned with an endorsement to that effect. Cal. H. Cir. No. 34 June 19, 1864. **R**

(*j*) The expression 'in the manner of school discipline' finds no place in S. 322, Cr. P. C. and hence whipping should be inflicted according to the directions contained in Criminal Circular III. 14 C.P.L.R. 64. **S**

(*k*) **Flogging on back, legality of.**

Where the Magistrate treating the accused as a juvenile offender, in place of sentencing to imprisonment in a Reformatory for 3 or 4 months sentenced him to receive 15 stripes on his back by way of school discipline and pay a fine of Rs 3, *held* the Magistrate was wrong in thinking that the accused could be detained in the Reformatory for that period of his imprisonment in sentencing him to be flogged on his back and in fining him in addition. 6 C.P.L.R. 34. **T**

(*l*) It is not legal to inflict stripes on hands as whipping. 5 C.P.L.R. 31. **U**

(22) **Whipping, fit state of prisoner to undergo.**

A man sentenced to whipping is not to be whipped unless he is in a fit state to bear it. The whipping should not be commenced, but commenced, it cannot be continued longer, than the man is fit to bear it and then the sentence is satisfied, for it cannot be executed by instalments. 3 Mad. H.C. Ap. 1. **Y**

(23) **Medical officer, nature of certificate.**

A sentence of whipping is prevented from being executed wholly or partially according as the medical officer certifies either at or during the execution of whipping respectively that the offender is not in a fit state of health to undergo the punishment. But the law does not authorise a medical officer to give a certificate before commencement of whipping that the accused is fit to receive only a portion of the sentence and the Magistrate in such a case cannot sentence the offender to imprisonment in lieu of so much of the sentence as was not executed. 17 M.L.J. 555=31 M. 84=7 Cr. L.J. 5=3 M.L.T. 31. **W**

(24) **Magistrate to whom case is referred, power to award whipping.**

A Magistrate to whom a case is referred is competent to pass a sentence of whipping if he could have done so if he were originally trying the case. Bom. Cr. Rg. 8-12-70. **X**

(25) **Jurisdiction of Court awarding whipping, to revise it.**

Where a sentence of whipping passed by a District Magistrate is confirmed by the Sessions Judge on appeal, the power of the former to revise the sentence of whipping is not affected by such confirmation for the only Court which can act when the sentence of whipping cannot be carried out, is the Court which originally passed the sentence. 11 P. R. 1889. **Y**

General—(*Continued*).

(26) **Appeal, lower Court's power to revise sentence of whipping after.**

When the sentence by a District Magistrate of imprisonment and whipping was confirmed on appeal, and the Magistrate then revised the sentence of whipping by awarding instead, 6 months' imprisonment and sent up the total sentence for confirmation, *held* the revision of the sentence of whipping did not render the total sentence liable to confirmation and the decision in appeal did not affect the Magistrate's power to revise the sentence of whipping. 10 P.R. of 1889. **Z**

(27) **District Magistrate, power of, to take up case in revision before appeal.**

Where the accused was convicted of theft and sentenced to imprisonment and whipping and before the expiry of the period of appeal the District Magistrate took up the case in revision and holding that both whipping and imprisonment should not have been ordered, directed the accused to be whipped and submitted the case for the orders of the Chief Court. *held* that the sentence was appealable to the Court of Session and the District Magistrate acted illegally in taking up the case on revision before the expiry of the period prescribed for appeal. 3 P.L.R. 170. **A**

(28) **Whipping, infliction of, in appeal.**

When the appellate Court reduced the sentence of imprisonment and also awarded whipping *held* the sentence of whipping amounted to enhancement of sentence. 2 Weir 487. **B**

(29) **Appeal against the whipping order—Execution of whipping.**

An appeal lies against a sentence of whipping passed by a Magistrate of the 2nd class, but if the whipping be awarded in lieu of any other punishment, the sentence should be carried into execution without delay. The effect of the appeal will be to ascertain the correctness of a sentence already carried out and not to bring under review the sentence itself with a view to its revision. C.H.C.R. 1864, 314. **C**

(30) **District Magistrate—Interference in cases of whipping.**

The words "the Court which passed the sentence" in S. 395, Cr. P.C. do not mean the same officer who inflicted the punishment of whipping originally and in the absence of the officer who originally passed the sentence the District Magistrate can be held to be "the Court which passed the sentence." 33 P.R. 1901 (Cr.). **D**

(31) **Whipping, illegal sentence of, High Court's power to set aside.**

A sentence of whipping in addition to imprisonment the term of which is less than three months is illegal under S. 391 (3) Cr. P.C. and the High Courts can, under S. 439 (5), Cr. P.C., set aside the sentence of whipping even though the party who could have appealed has not done so. 2 Weir 447. **E**

(32) **Whipping, commutation of sentence of.**

Under this Act the Court cannot after passing a sentence of imprisonment commute it to a sentence of whipping which ought to be passed directly. 5 L.B.R. 22. **F**

(33) **Whipping, when to be inflicted.**

Whipping should be restricted to offences of a degrading nature and that it should never be administered when it is likely to outrage self-respect. (Statement of Objects and Reasons). **G**

General—(*Concluded*).

(34) **Whipping, maximum number of stripes to be inflicted.**

Under the provisions of Ss. 392 and 393, not more than one sentence of whipping and that not exceeding 30 stripes (now 15) should be awarded at one time. 4 Cr. L.J. 281. **H**

Offences punishable with whipping in lieu of other punishment.

3. Whoever commits any of the following offences, namely :—

(*a*) theft, as defined in section 378 of the Indian Penal Code other than theft by a clerk or servant of property in possession of his master;

(*b*) theft in a building, tent or vessel, as defined in section 380 of the said Code;

(*c*) theft after preparation for causing death or hurt, as defined in section 382 of the said Code;

(*d*) lurking house-trespass, or house-breaking, as defined in sections 443 and 445 of the said Code, in order to the committing of any offence punishable with whipping under this section;

(*e*) lurking house-trespass by night, or house-breaking by night, as defined in sections 444 and 446 of the said Code, in order to the committing of any offence punishable with whipping under this section;

may be punished with whipping in lieu of [1] any punishment [2] to which he may for such offence be liable under the said Code.

(Notes).

1.—"In lieu of."

(1) **District Magistrate, competency of, to alter sentence into one of whipping.**

When the accused was convicted under S. 411, I.P.C. and sentenced to fine or imprisonment in default and on appeal the District Magistrate altered the sentence to one of 50 lashes in lieu of the imprisonment the accused had yet to undergo in default of payment of fine *held*, the District Magistrate was competent to alter the sentence notwithstanding that the accused had been in confinement for some days but the sentence of whipping should have been substituted for the sentence originally passed and not for the remaining term of imprisonment. Rat. Unrep. Cr. Cases. 131. **I**

(2) **Double sentences of whipping illegal.**

It is not competent to a Judge to postpone the sentence of whipping till after the expiry of the sentence of imprisonment imposed upon the accused and a double sentence of whipping is illegal. 4 Bom. L.R. 929. **J**

(3) **Fine along with whipping, validity of.**

When an accused is sentenced to whipping he cannot be sentenced to pay a fine also, such a double sentence being opposed to the provisions of this section. Rat. Unrep. Cr. Cases. 564. **K**

I.—"In lieu of"—(Concluded).

(4) **House-breaking, attempt to commit, not punishable with whipping.**

In a conviction for attempting to commit house-breaking by night with intent to commit theft, a sentence of whipping is illegal. 3 B.H.C.R.Cr. 37. **L**

(5) **Sentence of whipping—Procedure to be followed in pronouncing.**

When a sentence of whipping is passed as a sole punishment under this section it is not necessary to pass a sentence provided for the offence under the I.P.C. first and then to convert such sentence into one of whipping. Rat. Unrep. Cr. Cas. 906. **M**

(6) **Whipping substitution of, for another punishment.**

When the offence is one of theft in a dwelling house, whipping may be substituted for any other punishment. 3 W.R. 36 (Cr.). **N**

(7) **Whipping and fine or imprisonment, validity of.**

When an accused person is sentenced to whipping under this section the punishment of fine or imprisonment or both cannot be inflicted under the I.P.C. in addition to the whipping. 16 B 357. **O**

(8) **Whipping for offence under S. 382, I.P.C., legality of.**

Where an accused was convicted under S. 382, I.P.C. and sentenced to whipping which was inflicted and an application was made to the High Court for an enhancement of the sentence on the ground that it was inadequate, *held* that the sentence was legal and could not be reversed 6 C.P.L.R. 36. **P**

(9) **Whipping, illegal sentence of, carried into execution.**

Where a sentence of imprisonment has been passed and one of whipping also has been passed illegally and the whipping has been carried into execution and where the sentence as whole is unduly lenient, the High Court will not necessarily set aside the sentence of imprisonment. 1 Weir 935. **Q**

(10) **Whipping, enhancement of the sentence of.**

Where an accused was sentenced to whipping on a conviction under S. 382, and application was made to the High Court for enhancement of sentence, *held* it could not be enhanced by awarding imprisonment, as the offence of which the accused was convicted was the first offence and it could not be enhanced by infliction of additional stripes, as no sentence of whipping could be executed by instalments. 6 C P. L. R. 36. **R**

(11) **Whipping and another punishment for another similar offence.**

A sentence of whipping in addition to another punishment for one of two offences of the same character of which the accused is simultaneously convicted is illegal. 29 P. R.; 8 P. R. 1885 (Cr.). **S**

(12) **Whipping and imprisonment, for two offences respectively, validity of.**

Where an accused not having been convicted previously of either of the offences was convicted under Ss. 454 and 380, I. P. C., on one occasion and was sentenced to rigorous imprisonment for six months and to receive 50 lashes, it was *held* that as whipping might have been awarded for either of the offences it was open to the High Court to amend the sentence by allocating a sentence of imprisonment to one of the offences and a sentence of whipping to the other. 1 Weir 934. **T**

2.—"Punishment."

Punishment, meaning of.

The word punishment in this section means the total of punishments awardable under the Indian Penal Code. 16 B. 357. **U**

Offences punishable with whipping in lieu of or in addition to other punishment.

4. Whoever—

(*a*) abets, commits or attempts to commit, rape, as defined in section 375 of the Indian Penal Code;

XLV of 1860. (*b*) compels, or induces any person by fear of bodily injury, to submit to an unnatural offence as defined in section 377 of the said Code;

(*c*) voluntarily causes hurt in committing or attempting to commit robbery, as defined in section 390 of the said Code;

(*d*) commits dacoity as defined in section 391 of the said Code;

may be punished with whipping in lieu of or in addition to[1] any other punishment to which he may for such offence, abetment or attempt be liable under the said Code.

(Notes).

(1) **Charge to—Set out liability to whipping.**

The liability to whipping as an additional punishment and the liability to enhanced punishment under S. 75, I.P.C., are distinct liabilities and either or both the liabilities should be set out in the charge according as they arise or not, in the circumstances of each particular case. 2 Weir 267. **Y**

(2) **Section applies to juvenile offenders also.**

This section applies to juvenile as well as to adult offenders. 7 B.H.C.R. 70 (Cr.). **W**

1.—"In addition to."

(1) **Liability to whipping.**

Whipping when awardable under this section is a special form of punishment which may be given in addition to any other punishment to which an accused may be liable under S. 75, I. P. C. 2 Weir 267. **X**

(2) **This section is subject to S. 391 (3), Cr. P. C.**

This section is to be read subject to the provision of S. 391 (3) of Cr. P. C., 1898, so that a sentence of whipping when the imprisonment awarded is less than three months is illegal. Where an accused is convicted of two offences for one of which he is sentenced to imprisonment and for the other to whipping, it is not permissible to postpone the whipping merely because the accused has appealed against the conviction in the first sentence. 4 Bom. L. R. 436. **Y**

1.—"In addition to"—(Concluded).

(3) **Whipping and imprisonment—High Court's power in revision.**

Where a combined sentence of imprisonment and whipping cannot be passed, and whipping which might itself be legally passed has been executed, the proper course to adopt in revision will be to set aside the sentence of imprisonment. 1 L.B.R. 362. **Z**

(4) **Whipping, power of Sessions Judge to suspend sentence of.**

A Sessions Judge has no power to suspend a sentence in a case in the absence of appeal. 5 M.H.C.R. App. 1. **A**

(5) **Whipping under the Coffee Stealing Prevention Act.**

Under Act VIII of 1878 (The Madras Coffee Stealing Prevention Act) S. 13, a Magistrate can sentence a maistry or labourer not being a female to whipping who is convicted a second time for being found in possession of green gathered coffee without being able to account for it satisfactorily. The whipping may be the sole or additional punishment. **B**

Juvenile offenders when punishable with whipping.

5. Any juvenile offender [1] who abets, commits or attempts to commit—

(*a*) any offence punishable under the Indian Penal Code, except offences specified in Chapter VI and in sections 153-A and 505 of that Code and offences punishable with death, or

(*b*) any offence punishable under any other law [2] with imprisonment, which the Governor-General in Council may, by notification in the *Gazette of India*, specify in this behalf,

may be punished with whipping in lieu of [3] any other punishment to which he may for such offence, abetment or attempt be liable.

Explanation.—In this section the expression "juvenile offender" means an offender whom the Court, after making such enquiry (if any) as may be deemed necessary, shall find to be under sixteen years of age, the finding of the Court in all cases being final and conclusive.

(Notes).

(1) **This section does not supersede Ss. 3 & 4.**

This section as well as Ss. 2, 3, 4 apply to juvenile offenders. This section is not meant to supersede Ss. 3 & 4 but to be applied in the proper cases alternatively with those sections. Rat. Unrep. Cr. Cas. 78. **B 1**

(2) **Juveniles, exempted from whipping in certain cases.** **C**

Juveniles have been exempted under the present Act from the punishment of whipping for offences against the State as specified in chapter VI and Ss. 153 A and 505, I.P.C. Select Committee Report. **D**

(3) **Juvenile offender, delivery of, to his parents.**

Where, a boy aged 14 was convicted of causing hurt with a dangerous weapon and was sentenced under S. 5 of the Whipping Act to 15 stripes with a light rattan and the question was whether under the Reformatory Schools Act the boy could be delivered to his parents on their giving a bond, *held* that the section did not permit a bond being given after whipping had been inflicted. 3 L.B.R. 30. E

(4) **Whipping, place of execution of in case of a juvenile.**

The whipping of a juvenile should always be in private unless his character is such as to render him undeserving of this consideration. Beng. Govt. Aug. 11, 1898, Cal. H. Ct. Rules etc., p. 64. F

(5) **Notification under this section.**

For notification under this section, cl. (4). See notification No. 350, by the Governor-General of India, quoted in 14 C.W.N. cxxiv. G

1.—"Juvenile offender."

(1) **Juvenile offender, meaning of.**

(*a*) By the term "juvenile offender" in this section, is meant an offender who is under the age of sixteen years. 6 A. 482; 8 B.H.C.R. Cr. 9.

(*b*) Where an accused person who was found to be between 16 and 17 years of age was convicted of an offence punishable under S. 307, I.P.C. and sentenced as juvenile offender under S. 5 to whipping of 30 stripes, *held* that the sentence of whipping was illegal as the words "juvenile offender" mean a person under 16 years of age. 7 C.P.L.R. 32 (Cr.). H

(2) **Juvenile offender—Substitution of whipping for imprisonment.**

Where the accused, a lad of 14 years was convicted of unnatural offence under S. 377, I.P.C. and sentenced to imprisonment, the Chief Court *held* that the punishment of whipping was far more suitable for a juvenile offender convicted of bestiality than the sentence of imprisonment which had been inflicted and that it was competent to the appellate Court to alter the nature of the sentence by setting aside the sentence of imprisonment and substituting whipping for the same. 3 P.R. 1884 (Cr.). I

(3) **Juvenile offender, whipping by way of school discipline.**

Where a boy unintentionally struck a person with a light stick on the head by which the skull happened to be fractured and death ensued *held* he was guilty under S. 325, I.P.C. and not 304, I.P.C. and the convict being a boy should be sentenced to receive some stripes by way of school discipline. 8 B.L.R. 242. J

2.—"Any other law."

Offences outside Penal Code—Whipping for such offences.

In cases of offences outside the Indian Penal Code, whipping may be inflicted on juveniles only in respect of such offences as may be notified by the Governor-General in Council as being so punishable. Select Committee Report. K

3.—"In lieu of."

"In lieu of" meaning of.

Under this section a juvenile offender may be punished with whipping in lieu of any other punishment to which he may be liable but the words "in lieu of" mean in lieu of the whole of the punishment to which he is liable. So, it is illegal to pass sentence of whipping in lieu of imprisonment under the Whipping Act and at the same time to pass sentence of fine under the I.P.C. 5 L.B.R. 22. L

Special provision as to punishment with whipping in frontier districts.

6. Whenever any Local Government has, by notification in the official Gazette, declared the provisions of this section to be in force in any frontier district or any wild tract of country within the jurisdiction of such Local Government, any person who in such district or tract of country after such notification as aforesaid commits any offence punishable under the Indian Penal Code with imprisonment for three years or upwards, may be punished with whipping in lieu of any other punishment to which he may be liable under the said Code.

Amendment of section 392, Act V, 1898.

7. To section 392, sub-section (2) of the Code of Criminal Procedure, 1898, the words "and, in the case of a person under sixteen years of age, it shall not exceed fifteen stripes" shall be added.

Repeals.

8. The enactments mentioned in the schedule are hereby repealed to the extent specified in the fourth column thereof.

THE SCHEDULE.

ENACTMENTS REPEALED.

(*See Section 8.*)

1	2	3	4
Year.	No.	Subject or short title.	Extent of repeal.
		Acts of the Governor-General in Council.	
1864	VI	The Whipping Act, 1864 ...	So much as is unrepealed.
1895	III	The Indian Criminal Law Amendment Act, 1895 ...	Section 5.
1898	V	The Code of Criminal Procedure, 1898	The words "whipping (if specially empowered)" in sub-section (1) and sub-section (3) of section 32. The words and figures "(1) Power to pass sentences of whipping, section 32" under the heading "Powers with which a Magistrate of the second class may be invested" in Schedule IV.
1898	XIII	The Burma Laws Act, 1898 ...	Section 4, sub-section (3), clause (*b*), and the Second Schedule.
1900	V	The Whipping Act, 1900 ...	The whole Act.

THE WHIPPING ACT, 1909.

INDEX.

Note. 1.—The thick figures at the end of each line refer to the pages of this volume and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S in Brevier Roman denotes the section.

A

Act, This, to be read as part of Penal Code, *F*, **6**.

Madras Act VIII of 1878 (Coffee stealing prevention), S. 13—Whipping under, *B*, **15**.

Alteration, of sentence into whipping on appeal, *I*, **12**.

Amend, High Court's power to, sentence, *T*, **13**.

Amendment, of S. 392 (2) of Act V of 1898, S. 7, **17**.

Appeal, Power of District Magistrate to take case in revision before, *A*, **11**.

Infliction of whipping in, *B*. **11**.

Against the whipping order, *C*, **11**.

Lower Court's power to revise sentence of whipping after, *Z*, **11**.

Alteration of sentence in, into whipping, *I*, **12**.

Postponement of sentence of whipping, *Y*, **14**.

Attempt, Whipping for, to commit offence, *S*, **7**.

to commit house-breaking—Whipping, *L*, **13**.

Juveniles when punishable with whipping for, to commit offence, S. 5, **15**.

B

British Baluchistan, Extension of the Act to, *S*, **15**.

C

Certificate, of medical officer as to state of health of prisoner to undergo whipping, *W*, **10**.

Charge, to set out liability to whipping, *V*, **14**.

Commutation, of sentence of whipping, *F*. **11**.

Construction. S. 4 is subject to S. 391 (3) Cr. P.C., *Y*, **14**.

S. 5 does not supersede Ss. 3 & 4, *C*, **15**.

Meaning of "in lieu of" in S. 5, *L*, **16**.

Conviction, For two offences—Whipping for both, *G*, **6**.

For more than one offence—Whipping for one and imprisonment for others, *H*, **6**,

Court, Competent to revise sentence of whipping, *Y*, *Z*, **10, 11**.

Crim. Pro. Code, To be read as if this Act formed a part of Penal Code, *F*, **6**.

S. 391 (3)—Postponement of execution of sentence of whipping, *Y*, **14**.

S. 392 (2)—Amendment of, S. 7, **17**.

D

Dacoity, Whipping for, in lieu of or in addition to other punishment, S. 4, **14**.

Death, Whipping on person under sentence of, *I*, **6**.

Juveniles not punishable with whipping for capital offences, S. 5, **15**.

District Magistrate, Power of, to take case in revision before appeal, *A*, **11**.

Interference in case of whipping, *D*, **11**.

Competency of, to alter in appeal sentence into one of whipping, *I*, **12**.

E

Enhancement, of sentence of whipping, *P—R*, **13**.

Escape, Whipping after recapture of escaped prisoner, *U*, **7**.

Execution, Place of, of the sentence of whipping, *G—I*, **9**.

Mode of, of sentence of whipping, *J—S*, **9, 10**.

of illegal sentence of whipping, *Q*, **13**.

Place of, of sentence of whipping for juveniles, *F*, **16**.

Exemption, from whipping of juveniles, S. 4, **14**, *D*, **15**.

F

Fine, cannot be awarded in lieu of whipping, *K*, **6**.

Whipping in default of payment of, *P*, **7**.

Along with whipping, *K*, **12**.

Whipping in addition to, and imprisonment, *O*, **13**.

Frontier Districts, Special provision as to whipping in, S. 6, **17**.

H

Health, Fit state of prisoner to undergo whipping, *V*, **10**.

See CERTIFICATE.

High Court, Power of, to set aside illegal sentence of whipping, *E*, **11**.

Power of, to amend sentence, *T*, **13**.

House breaking, Whipping for offence of, S. 3, **12**.

Whipping for offence of, by night, S. 3, **12**.

Attempt to commit, not punishable with whipping, *L*, **13**.

House trespass, Lurking, by night—Whipping for, S. 3, **12**.

Lurking,—Whipping for, S. 3, **12**.

Hurt, Whipping for, in lieu of or in addition to other punishment, S. 4, **14**.

I

Illegal, Sentence of whipping--High Court's power of interference, *E*, **11**.

Double sentence of whipping, *J*, **12**.

Sentence of whipping carried into execution, *Q*, **13**.

Imprisonment, Conviction for two offences—Whipping for one, imprisonment for another, *H*, **6**.

Whipping on person under sentence of, *I*, **6**.

Whipping in addition to, *J*, **6**.

In lieu of whipping—Period, 6 ; *N*, **7**.

Solitary confinement to one sentenced to, in lieu of whipping, *Q*, **7**.

Whipping in addition to fine and, *O*, **13**.

See REVISION.

In lieu of, Meaning of, in S. 5, *L*, **16**.

J

Judgment, What it should contain in cases of whipping, *I*, **6**.

Jurisdiction, of Court awarding whipping to revise it, *Y*, **10**.

Juvenile offenders, Applicability of S. 4, to, and adult offenders, *W*, **14**.

When punishable with whipping, S. 5, **15**.

Exempted from whipping in certain cases, *D*, **15**.

Delivery of, to their parents, *E*, **16**.

place of execution of whipping, *F*, **16**.

Meaning of, S. 5, **15**, *H*, **16**.

Whipping suitable for offence under S. 377, I.P.C., *I*, **16**.

Whipping by way of school discipline, *J*, **16**.

M

Magistrate, Power of, to award sentence in lieu of whipping, *M*, **7**.

Competency of, to whom case is referred to pass sentence of whipping, *X*, **10**.

Maximum, Number of stripes to be inflicted, *H*, **12**.

Medical Officer, Certificate of, as to state of health of prisoner to undergo whipping, *W*, **10**.

Mode, of execution of sentence of whipping, *J—S*, **9**, **10**.

N

Notification, under S. 5, *G*, **16**.

O

Offences, Punishable with whipping in lieu of other punishment, S. 3, **12**.

for which juveniles should not be punished with whipping, S. 5, **15**.

outside Penal Code—Whipping, *K*, **16**.

P

Penal Code, Liability to enhanced punishment to be set out in charge, *V*, **14**.

Chap. VI—juveniles not punishable with whipping for offences under, S. 5, **15**.

Offences outside—Whipping for such offences, *K*, **16**.

S. 53—Whipping added to punishments described in, S. 2, **6**.

Ss. 153-A, 505—Juveniles not punishable with whipping for offences under, S. 5, **15**.

S. 325—Whipping by way of School discipline—Juvenile, *J*, **16**.

S. 375—Rape—Whipping in lieu of or in addition to other punishment, S. 4, **14**.

S. 377—Unnatural offence—Whipping for, S. 4, **14**.

S. 377—Whipping suitable to juveniles, *I*, **16**.

S. 378—Whipping in lieu of other punishment, S. 3, **12**.

S. 380—Whipping for offence under, S. 3, **12**.

S. 382—See S. 380.

S. 390—Robbery—Whipping for causing hurt in, S. 4, **14**.

S. 391—Whipping for dacoity, S. 4, **14**.

S. 443—Lurking house trespass—Whipping for, S. 3, **12**.

S. 444—Lurking house trespass by night—Whipping for, S. 3, **12**.

S. 445—House breaking—Whipping for, S. 3, **12**.

S. 446—House breaking by night—Whipping for, S. 3, **12**.

Penal servitude, Whipping on person under sentence of, *I*, **6**.
Period, of imprisonment in lieu of whipping, *L*, **6** ; *N*, 7.
Place, of execution of sentence of whipping, *G—I*, **9**.
of execution of sentence of whipping for juveniles, *F*, **16**.
Police Act, Whipping cannot be inflicted for offence under, *O*, **7**.
Postponement, Whipping postponed to a future date—Validity, *W—F*, **8**.
Procedure, to be followed in pronouncing sentence of whipping, *M*, **13**.
Whipping and imprisonment illegally passed—Whipping inflicted, *Z*, **15**.
Punishment, Meaning of, in S. 3, *U*, **14**.
Whipping in lieu of or in addition to other, S. 4, **14**.
See OFFENCES.

R

Rape, Whipping for, in lieu of or in addition to other punishment, S. 4, **14**.
Referred, Competency of Magistrate to whom case is, to pass sentence of whipping, *X*, **10**.
Remit, Discretion of Magistrate to, sentence of whipping, *T*, **7**.
Repeals, Enactments repealed, S. 8, **17**.
Revise, Jurisdiction of Court awarding whipping to, it, *Y*, **10**.
Lower Court's power to, sentence of whipping after appeal, *Z*, **11**.
Revision, Power of District Magistrate to take case in, before appeal, *A*, **11**.
Whipping and imprisonment illegally passed—Whipping executed—High Court's power to set aside imprisonment, *Z*, **15**.
Robbery, Whipping for, in lieu of or in addition to other punishment, S. 4, **14**.

S

Santhal Parganas, Extension of the Act to, S. 1, **5**.
Self respect, Whipping not to be inflicted when likely to outrage, *G*, **11**.
Sentence, Magistrate's power to award, in lieu of whipping, *M*, **7**.
Double, of whipping, *R*, **7**.
of whipping postponed, *W—F*, **8**.
Place of execution of, of whipping, *G—I*, **9**.
Mode of executing, of whipping, *J—S*, **9**, **10**.
Double sentence of whipping, *J*, **12**.
High Court's power to amend, *T*, **13**.
Combined of whipping and imprisonment—Procedure when illegal, *Z*, **15**.
Sessions Judge Power of, to suspend whipping, *A*, **15**.
Simultaneous conviction, for two offences—Whipping and another punishment, *S*, **13**.
for two offences—High Court's power to amend sentence, *T*, **13**.
Solitary confinement, to one sentenced to imprisonment in lieu of whipping, *Q*, **7**.
Stripes, Maximum number of, to be inflicted, *H*, **12**.
Suspend, Power of Sessions Judge to, whipping, *A*, **15**.

T

Theft, Whipping for, S. 3, 12 ; *N*, **13**.
Time, Whipping not executed in proper, *V*, **7**.
Transportation, Whipping on person under sentence of, *I*, **6**.

U

Unnatural offence, Whipping for, in lieu of or in addition to other punishment, S. 4, **14**.

W

Whipping, When and on whom to be inflicted, *A—E*, **5**.
Punishment of, added to punishments described in Penal Code, S. 2, **6**.
For two offences convicted of at the same time, *G*, **6**.
For one offence and imprisonment for another, *H*, **6**.
On person already under severe sentence, *I*, **6**.
What should judgment contain in case of, *I*, **6**.
in addition to imprisonment, *J*, **6**.
Fine in lieu of, *K*, **6**.
Magistrate's power to award sentence in lieu of, *M*, **7**.
Imprisonment in lieu of—Period, *L*, **6**; *N*, **7**.
cannot be inflicted for offence under Police Act, *O*, **7**.
in default of payment of fine, *P*, **7**.
Solitary confinement to one sentenced to imprisonment in lieu of, *Q*, **7**.
Double sentence of, *R*, **7**.
for attempting to commit offence, *S*, **7**.
Discretion of Magistrate to remit, *T*, **7**.
After re-capture of escaped prisoner, *U*, **7**.
not executed in proper time—Liability of prisoner, *V*, **7**.
postponed to a future date—Validity, *W—F*, **8**.
Place of execution, *G—I*, **9**.
Mode of executing sentence of, *J—S*, **9**, **10**.
Fit state of prisoner to undergo, *V*, **10**.
Court to revise sentence of whipping, *Y*, **10**.
Infliction of, in appeal, *B*, **11**.
Appeal against, order, *C*, **11**.
Interference of District Magistrate in cases of, *D*, **11**.
High Court's power to set aside illegal sentence of, *E*, **11**.
Commutation of sentence of, *F*, **11**.
not to be inflicted when likely to outrage self respect, *G*, **11**.
Lower Court's power to sentence of, after appeal, *Z*, **11**.
Offences punishable with, in lieu of other punishment, S. 3, **12**.
Maximum number of stripes to be inflicted, *H*, **12**.
Double sentence of, *J*, **12**.
Fine along with, *K*, **12**.
Procedure to be followed in pronouncing sentence of, *M*, **13**.
for theft in a dwelling house, *N*, **13**.
in addition to fine and imprisonment, *O*, **13**.
for offence under, S. 382, I.P.C., legal, *P*, **13**.
in lieu of or in addition to another punishment, S. 4, **14**.
when cannot be postponed, *Y*, **14**.
Juveniles when punishable with, S. 5, **15**.
by way of school discipline, *J*, **16**.
for offences outside Penal Code, *K*, **16**.
in frontier districts, S. 6, **17**.

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THE

INDIAN EXTRADITION ACT, 1903

(ACT XV OF 1903)

(WITH THE CASE-LAW THEREON)

BY

T. V. SANJIVA ROW,

FIRST GRADE PLEADER TRICHINOPOLY.

(AUTHOR OF A "DIGEST OF PRIVY COUNCIL RULINGS,"
THE "CURRENT INDEX OF INDIAN CASES,"
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THE "INDIAN EVIDENCE ACT.")

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THE EXTRADITION ACT, (1903).

TABLE OF CASES NOTED IN THIS ACT.

		PAGE
	I.L.R. Allahabad Series.	
2 A 218	Empress of India v. Sarmukh Sing	20
19 A 109	Queen-Empress v. Ram Sundar	21
	I.L.R. Bombay Series.	
1 B 340	Reg v. Locha Kala	15
3 B 334	Empress v. Dossaji Gulam Husain	19, 20
9 B 333	Queen-Empress v. W. D. Edwards	7
13 B 147	——— v. Daya Bhima	20
14 B 160	Job Solomon, *In re*	31
14 B 227	Queen-Empress v. Sheikh Abdool Rahiman	23
16 B 178	——— v. Natwardi	20, 21
17 B 369	——— v. Khoda Uma	14
24 B 287	——— v. Baku	20, 21
25 B 636	King-Emperor v. The Chief Officer of the S. S. Mushtari	24
	I.L.R. Calcutta Series.	
8 C 985	Empress v. Keshub Mohajan	8
16 C 238	Queen-Empress v. Barton	24
21 C 782	——— v. Gunning	24
25 C 20	Muhammad Yusuf-ud-din v. Queen-Empress	28, 30
33 C 219	Hem Chand Dev Chand v. Azam Sakar Lal Chhotam Lal	13, 31
	I.L.R. Madras Series.	
5 M 23	Bapu Dald v. The Queen	28
5 M 33	Ward v. The Queen	7, 27, 28
7 M 354	Siddha v. Biligiri	26
10 M 21	Gregory v. Vadakasi Kangani	26
12 M 39	Hayes, *In re*	29
13 M 423	Queen-Empress v. Kathaperumal	21
26 M 607	Adams v. Emperor	29, 30
	The Allahabad Law Journal.	
3 A L J 250	Hem Chand Dev Chand v. Azam Sakar Lal Chhotam Lal	31
	The Bombay High Court Reports.	
5 B H C 64 (O C J)	Hormasji and Ukarji	24
7 B H C C C 89	Reg v. Elmstone Whitwell	24
8 B H C C C 67	—— v. Kastya Rama	24
	The Bombay Law Reporter.	
1 Bom L R 678	Queen-Empress v. Baku	20
3 Bom L R 253	King-Emperor v. The Chief Officer of Mushtari	24
7 Bom L R 463	Emperor v. Husainally Niazally	10, 14, 19
8 Bom L R 129	Hem Chand Dev Chand v. Azam Sakar Lal Chhotam Lal	31

		PAGE
	Ratanlal's Unreported Criminal Cases.	
Rat Unrep Cr C 97..	Reg v. Kahandas ...	23
Rat Unrep Cr C 124.	Kaladgi Magistrate's Quarterly Return ...	11
Rat Unrep Cr C 773.	Queen-Empress v. Abdul Hussen ...	21
	The Calcutta Law Journal.	
3 C L J 395 ...	Hem Chand Dev Chand v. Azam Sakar Lal Chhotam Lal ...	31
7 C L J 171 ...	Raj Kumar Dutt v. Tothal Sijo ...	16
	The Calcutta Weekly Notes.	
2 C W N 1 (P.C.) ..	Sayad Muhamad Yusuf-ud-din v. Queen-Empress ...	28, 30
10 C W N 361 ...	Hem Chand Dev Chand v. Azam Sakar Lal Chhotam Lal ...	31
12 C W N 602 ...	Raj Kumar Dutt v. Tothal Sijo ...	16
	Sutherland's Weekly Reporter.	
2 W R 49 Cr ...	Queen v. Roopa ...	22
	The Madras Law Journal.	
16 M L J 115 ...	Hem Chand Dev Chand v. Azam Sakar Lal Chhotam Lal ...	31
	The Madras Law Times.	
1 M L T 115 ...	Hem Chand Dev Chand v. Azam Sakar Lal Chhotam Lal ...	31
	Weir's Criminal Rulings.	
2 Weir 148 ...	The Sessions Judge of South Arcot ...	21
	The Oudh Cases.	
5 O C 55 ...	Kabir Ahmad v. Bhopal State ...	15
	The Punjab Record.	
14 P R 1873 (Cr) ...	Hukam Chand v. The Crown ...	15
20 P R 1878 ...	Kishen Kour v. Crown ...	26
29 P R 1878 (Cr) ...	The Crown v. Dad Gul ...	20
37 P R 1881 (Cr) ...	Empress v. Nawabji ...	26
22 P R 1883 (Cr) ...	Fakir v. Empress ...	21, 22
1 P R 1885 Cr ...	—— v. —— ...	22
21 P R 1886 (Cr) ...	Ahadju, *In the matter of* ...	13
8 P R 1887 (Cr) ...	Empress v. Bhola Lal ...	22
1 P R 1896 ...	Muhummad Yusuf-ud-din v. Queen-Empress ...	29
1 P R 1901 (Cr) ...	Jaimal Singh v. Queen-Empress ...	26
36 P W R 1908 (Cr).	Giyan Chand v. Mehram ...	13
3 P R 1909 (Cr) ...	—— v. —— ...	13
	The Punjab Law Reporter.	
2 P L R 473 ...	Jaimal Singh v. The Empress ...	26
	Moore's Indian Appeals.	
7 M I A 72 ...	Nga Hoong v. The Queen ...	25, 26
	The Indian Appeals.	
24 I A 137 ...	Muhammad Yusuf-ud-din v. Queen-Empress ...	28, 30
33 I A 1 ...	Hem Chand Dev Chand v. Azam Sakar Lal Chhotam Lal ...	13

The Travancore Law Reports.

			PAGE
21 T L R 85	...	Isaac Nainan v. The Sirkar ...	30

The Criminal Law Journal.

2 Cr L J 439	...	Emperor v. Husainally Niazally ...	10, 14, 19
7 Cr L J 198	...	Raj Kumar Dutt v. Tothal Sijo ...	16
9 Cr L J 3	...	Giyan Chand v. Mehram ...	13

The English Cases.

1 Q B 108	...	Auton, *In re* ...	14
L R 5 P C 180	...	Attorney-General of Hong Kong v. Knok-A-Sing ...	32
1 Q B 149	...	Castidni, *re* ...	10
1 Q B 230	...	Galway, *In re* ...	28
L R 6 Q B 31	...	Marshall v. Murga-troyo ...	23
4 Q B 239	...	Philips v. Eyre ...	27
1 Mood C C 494	...	Reg v. Allen ...	23
L R 1 C C 161	...	—— v. Anderson ...	23
2 C & K 203	...	—— v. Azzopardi ...	24
10 Q B D 76	..	—— v. Carr ...	23
13 State Trials 454	...	—— v. Dawson ...	32
9 Q B D 93	...	—— v. Gang ...	11, 26
20 L J M C 164	...	—— v. Lewis ...	25
2 C and K 900	...	—— v. Manning ...	24
8 Bom Cr 13	...	—— v. Souter ...	32
33 L J M C 201	...	—— v. Vernam ...	27
3 Q B D 42	...	—— v. Wilson ...	27
7 Branch X	...	The Schooner Exchange v. Mc Hadden ...	25
2 Swinner 482	...	United States v. Davies ...	27
1 Mason 152	...	———— v. Hamilton ...	32
Bald 15	...	———— v. Kessler ...	25
5 Wheaton 144	...	———— v. Khintock ...	25
5 Wheaton 184	...	———— v. Pirates ...	25
34 L J M C 163	...	Windsor, *re* ...	28

THE INDIAN EXTRADITION ACT, 1903.

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title, extent and commencement.
2. Definitions.

CHAPTER II.

SURRENDER OF FUGITIVE CRIMINALS IN CASE OF FOREIGN STATES.

3. (*1*) Requisition for surrender.
(*2*) Summons or warrant for arrest.
(*3*) Inquiry by Magistrate.
(*4*) Committal.
(*5*) Bail.
(*6*) Magistrate's report.
(*7*) Reference to High Court if Government thinks necessary.
(*8*) Warrant for surrender.
(*9*) Lawfulness of custody and re-taking under warrant for surrender.
(*10*) Discharge of fugitive criminals committed to prison after two months.
4. (*1*) Power to Magistrate to issue warrant of arrest in certain cases.
(*2*) Issue of warrant to be reported forthwith.
(*3*) Person arrested not to be detained unless order received.
(*4*) Bail.
5. (*1*) Power of Government to refuse to issue order under section 3 when crime of political character.
(*2*) Power of Government to discharge any person in custody at any time.
6. References to "Police Magistrate" and "Secretary of State" in section 3 of Extradition Act, 1870.

SECTIONS.

CHAPTER III.

SURRENDER OF FUGITIVE CRIMINALS IN CASE OF STATES OTHER THAN FOREIGN STATES.

7. (*1*) Issue of warrant by Political Agents in certain cases.
(*2*) Execution of such warrant.
(*3*) Proclamation and attachment in case of persons absconding.
8. (*1*) Release on giving security.
(*2*) Magistrate to retain bond.
(*3*) Re-arrest in case of default.
(*4*) Deposit in lieu of bond, and forfeiture of bonds.
9. Requisitions by States not being Foreign States.
10. (*1*) Power to Magistrates to issue warrants of arrest in certain cases.
(*2*) Issue of warrant to be reported forthwith.
(*3*) Limit of time of detention of person arrested.
(*4*) Bail.
11. (*1*) Surrender of person accused of, or undergoing sentence for, offence in British India.
(*2*) Suspension of sentence on surrender.
12. Application of Chapter to convicted persons.
13. Abetment and attempt.
14. Lawfulness of custody and re-taking under warrant issued under Chapter.
15. Power of Government to stay proceedings and discharge persons in custody.
16. Application of Chapter to offences committed before its commencement.
17. (*1*) Receipt in evidence of exhibits, depositions and other documents.
(*2*) Authentication of the same.
(*3*) Definition of "warrant."
18. Chapter not to derogate from treaties.

CHAPTER IV.

RENDITION OF FUGITIVE OFFENDERS IN HIS MAJESTY'S DOMINIONS.

19. Application of Fugitive Offenders Act, 1881.

CHAPTER V.

OFFENCES COMMITTED AT SEA.

20. Requisition for surrender in case of offence committed at sea.

SECTIONS.

CHAPTER VI.

EXECUTION OF COMMISSIONS ISSUED BY CRIMINAL COURTS OUTSIDE BRITISH INDIA.

21. Execution of commissions issued by Criminal Courts outside British India.

CHAPTER VII.

SUPPLEMENTAL.

22. Power to make rules.
23. Detention of persons arrested under Section 54, clause *seventhly*, Act V, 1898.
24. Repeals.

THE INDIAN EXTRADITION ACT, 1903.

ACT NO. XV OF 1903.

[*4th November, 1903.*]

An Act to consolidate and amend the law relating to the Extradition and Rendition of Criminals.

WHEREAS it is expedient to provide for the more convenient administration in British India of the Extradition Acts, 1870 and 1873, and of the Fugitive Offenders Act, 1881; 33 & 34 Vict., c. 52; 36 & 37 Vict., c. 60;

and whereas it is also expedient to amend the law relating to the extradition of criminals in cases to which the Extradition Acts, 1870 and 1873, do not apply; 44 & 45 Vict., c. 69.

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called the Indian Extradition Act, 1903.

(2) It extends to the whole of British India (including British Baluchistan, the Santhal Parganas and the Pargana of Spiti); and

(3) It shall come into force on such day as the Governor General in Council, by notification in the Gazette of India, may direct.

(Notes).

(1) **Object of the Act.**

The main object of this Act is to consolidate and amend the law relating to offences committed beyond the limits of British India by such British subjects as the Indian Legislature had been empowered to deal with. 5 M. 33. **A**

(2) **Trial of British Subjects, committing offence in Native States.**

S. 188 Cr. P C. extends to all British subjects, European or Native, in Native states in alliance with Her Majesty, the law relating to offences and Criminal Procedure for the time being in British India. The Code of Criminal Procedure is thus applicable to such British subjects Native or European. 9 B. 333. **B**

(3) **Conviction in British India for offence committed without, legality of.**

Where the accused, residents of the District of Singhbham, a district in British India, were convicted of an offence committed in Mohurbhunj, *held* (Per Garth, C.J. and Pontif and Morris, JJ.) that although the territory of Mohurbhunj was not within the limits of British India, under the provisions of this Act a conviction in British India, of an offence committed without the limits was good.

Per Mitter J. :—Mohurbhunj was within the limits of British India, but the conviction ought not to be set aside as the Tributory Mehals constituted a District and the superintendent of these Mehals had been vested with the power of a Sessions-Judge.

Per Prinsep, J. :—Though Mohurbhunj was within the limits of British India, the Acts which extend to British India did not extend to Mohurbhunj and the territory having been expressly placed beyond the ordinary legislation, the British Indian Law cannot come into operation there until this exemption had been removed. 8 C. 985. C

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "European British subject" means a Eurpean British subject as defined by the Code of Criminal Procedure for the time being in force :

(*b*) "extradition offence" means any such offence as is described in the first schedule :

(*c*) "Foreign State" means a State to which, for the time being, the Extradition Acts, 1870 and 1873, apply :

33 & 34 Vict., c. 52; 36 & 37 Vict., c. 60.

(*d*) "High Court" means the High Court as defined by the Code of Criminal Procedure for the time being in force:

(*e*) "offence" includes any act wheresoever committed which would, if committed in British India, constitute an offence : and

(*f*) "rules" include prescribed forms.

CHAPTER II.

SURRENDER OF FUGITIVE CRIMINALS IN CASE OF FOREIGN STATES.

Requisition for surrender.

3. (1) Where a requisition is made to the Government of India or to any Local Government by the Government of any Foreign State for the surrender of a fugitive criminal of that State, who is in or who is suspected of being in British India, the Government of India or the Local Government, as the case may be, may, if it thinks fit, issue an order to any Magistrate who would have had jurisdiction to

inquire into the crime if it had been an offence committed within the local limits of his jurisdiction, directing him to inquire into the case.

Summons or warrant for arrest.

(2) The Magistrate so directed shall issue a summons or warrant for the arrest of the fugitive criminal according as the case appears to be one in which a summons or warrant would ordinarily issue.

Inquiry by Magistrate.

(3) When such criminal appears or is brought before the Magistrate, the Magistrate shall inquire into the case in the same manner and have the same jurisdiction and powers, as nearly as may be, as if the case were one triable by the Court of Session or High Court, and shall take such evidence as may be produced in support of the requisition and on behalf of the fugitive criminal including any evidence to show that the crime of which such criminal is accused or alleged to have been convicted is an offence of a political character [1] or is not an extradition crime.

Committal.

(4) If the Magistrate is of opinion that a *primâ facie* case is made out in support of the requisition, he may commit the fugitive criminal to prison [2] to await the orders of the Government of India or the Local Government [3], as the case may be.

Bail.

(5) If the Magistrate is of opinion that a *primâ facie* case is not made out in support of the requisition, or if the case is one which is bailable under the provisions of the Code of Criminal Procedure for the time being in force, the Magistrate may release the fugitive criminal on bail.

Magistrate's report.

(6) The Magistrate shall report the result of his inquiry to the Government of India, or the Local Government, as the case may be, and shall forward, together with such report, any written statement which the fugitive criminal may desire to submit for the consideration of the Government.

Reference to High Court if Government thinks necessary.

(7) If the Government of India or the Local Government, as the case may be, is of opinion that such report or written statement raises an important question of law, it may make an order referring such question of law to such High Court as may be named in the order, and the fugitive criminal shall not be surrendered until such question has been decided.

Warrant for surrender.

(8) If, upon receipt of such report and statement or upon the decision of any such question, the Government of India or the Local Government, as the case may be, is of opinion that the fugitive criminal ought to be surrendered, it may issue a warrant for the custody and removal of such criminal and for his delivery at a place [4] and to a person to be named in the warrant.

Lawfulness of custody and re-taking under warrant for surrender.

(9) It shall be lawful for any person to whom a warrant is directed in pursuance of sub-section (8), to receive, hold in custody and convey the person mentioned in the warrant, to the place named in the warrant, and, if such person escapes out of any custody to which he may be delivered in pursuance of such warrant, he may be re-taken as a person accused of an offence against the law of British India may be re-taken upon an escape.

Discharge of fugitive criminals committed to prison after two months.

(10) If such a warrant as is prescribed by sub-section (8) is not issued and executed in the case of any fugitive criminal, who has been committed to prison under sub-section (4), within two months after such committal, the High Court may, upon application made to it on behalf of such fugitive criminal and upon proof that reasonable notice of the intention to make such application has been given to the Government of India or the Local Government, as the case may be, order such criminal to be discharged, unless sufficient cause is shown to the contrary.

(Notes.)

High Court, power to interfere with Magistrate's action when illegal.

This section ousts the jurisdiction of the High Court to inquire into the propriety of the warrant but leaves open the question of the High Court's power to interfere with a Magistrate's action if it was proved that such action was consequent upon a warrant issued by a Political Agent which was plainly illegal. 7 Bom. L. R. 463 = 2 Cr. L.J. 439. **D**

1.—"Of a political character."

Crimes forming part of political disturbances—Surrender of criminal.

Fugitive criminals are not to be surrendered for crimes which are specified in the extradition treaties if those crimes were incidental to and formed a part of political disturbances, as for instance the shooting of a soldier who was engaged in putting down an insurrection or the destruction of property to form a barricade. Re-Castioni. 1 Q.B. 149. **E**

1.—"Of a political character."—(Concluded).

(2) **Offence of a political character, what is an.**

In order to constitute an offence of a political character there must be two or more parties in a State, each seeking to impose the Government of their own choice upon the other and if the offence is committed by one side or the other in pursuance of that object, it is a political offence; otherwise not. Thus, the case of an Anarchist causing explosions does not fall under the class of political offences. Per Meumer, 2 Q. B. 415. **F**

2.—"May commit the fugitive criminal to prison."

Criminal proceedings pending in Foreign State—Keeping accused in custody.

A British Magistrate is not warranted in keeping people in custody on a mere allegation that criminal proceedings against them are pending in a Foreign State. Unless proper steps be taken against the persons detained under this Act, they must be released. Rat. Unrep. Cr. C. 124. **G**

3.—"To await the orders of the Local Government."

Jurisdiction of British Court over offence committed by foreigner.

When an offence was committed in foreign territory by a foreigner who had resided for six months in British Territory and he was apprehended in foreign territory and delivered into the custody of a Magistrate in the Punjab, the Magistrate might accept the custody of the prisoner and hold the preliminary enquiry; but before trial he should report the case to the Commissioner of his Division and obey such orders as he might receive thereon. 10 P.R. 1868 (Cr.). **H**

4.—"For his delivery at a place,"

Extradition of a person from a State whose subject he is not.

In no case is it any objection to the demand for surrender that the criminal who has taken refuge in another State is not the subject of the demanding State. By the fact that he has committed a crime while visiting it, he becomes liable to its jurisdiction. *Reg.* v. *Gang*, 9 Q.B.D. 93. **I**

Power to Magistrate to issue warrant of arrest in certain cases.

4. (1) Where it appears to any Magistrate of the first class or any Magistrate specially empowered by the Local Government in this behalf that a person within the local limits of his jurisdiction is a fugitive criminal of a Foreign State, he may, if he thinks fit, issue a warrant for the arrest of such person, on such information or complaint and on such evidence as would, in his opinion, justify the issue of a warrant if the crime of which he is accused or has been convicted had been committed within the local limits of his jurisdiction.

Issue of warrant to be reported forthwith.

(2) The Magistrate shall forthwith report the issue of a warrant under this section to the Local Government.

(3) A person arrested on a warrant issued under this section shall not be detained more than two months unless within that period the Magistrate receives an order made with reference to such person under section 3, sub-section (*1*).

Person arrested not to be detained unless order received.

(4) In the case of a person arrested or detained under this section the provisions of the Code of Criminal Procedure for the time being in force relating to bail shall apply in the same manner as if such person were accused of committing in British India the crime of which he is accused or has been convicted.

Bail.

N.B.—For local rules and orders, refer to the Appendix.

5. (1) If the Government of India or any Local Government is of opinion that the crime of which any fugitive criminal of a Foreign State is accused or alleged to have been convicted is of a political character, it may, if it think fit, refuse to issue any order under section 3, sub-section (*1*).

Power of Government to refuse to issue order under section 3 when crime of political character.

(2) The Government of India or the Local Government may also at any time stay any proceedings taken under this Chapter and direct any warrant issued under this Chapter to be cancelled and the person for whose arrest such warrant has been issued to be discharged.

Power of Government to discharge any person in custody at any time.

N.B.—For local rules and orders, refer to the Appendix.

6. The expressions "the Police Magistrate" and "the Secretary of State" in section 3 of the Extradition Act, 1870, shall be read as referring respectively to the Magistrate directed to inquire into a case under section 3 of this Act, and to the Government of India or the Local Government, as the case may be.

33 and 34 Vict., c. 52.

References to "Police Magistrate" and "Secretary of State" in section 3 of Extradition Act, 1870.

N.B.—For local rules and orders, refer to the Appendix.

CHAPTER III.

SURRENDER OF FUGITIVE CRIMINALS IN CASE OF STATES OTHER THAN FOREIGN STATES.

7. (1) Where an extradition offence [1] has been committed or is supposed to have been committed by a person not being a European British subject, in the territories of any State not being a Foreign State, and such person escapes into or is in British

Issue of warrant by Political Agents in certain cases.

India and the Political Agent in or for such State issues a warrant, addressed to the District Magistrate of any district in which such person is believed to be, for his arrest and delivery at a place and to a person or authority indicated in the warrant, such Magistrate shall act in pursuance of such warrant [2] and may give directions accordingly.

Execution of such warrant.

(2) A warrant issued as mentioned in sub-section (1) shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants, and the accused person, when arrested, shall, unless released in accordance with the provisions of this Act, be forwarded to the place and delivered to the person or authority indicated in the warrant [3].

Proclamation and attachment in case of persons absconding.

(3) The provisions of the Code of Criminal Procedure for the time being in force in relation to proclamation and attachment in the case of persons absconding shall, with any necessary modifications, apply where any warrant has been received by a District Magistrate under this section as if the warrant has been issued by himself.

(Notes).

General.

(1) **Appeal to His Majesty in Council in Political cases.**

The jurisdiction exercised by the Court of the Political Agent and his assistants in Kathiawar and by the Governor-in-Council on appeal from them is political and not judicial in its character and no appeal lies to His Majesty in Council from the decisions passed by those tribunals in the exercise of such jurisdiction. 33 C. 219. **J**

(2) **Application to King-in-Council by foreign subject.**

If a Court situated in foreign territory like the Court of the Political Agent in Kathiawar and administering justice on the King's behalf makes an order judicial in its nature by which some one is unjustly and injuriously affected, the person aggrieved is not precluded from applying to the King-in-Council to redress his wrong merely by the fact that he is not the King's subject. (*Ibid.*) **J 1**

(3) **Chief Court, Punjab—Revisional power.**

Where a District Magistrate purports to act under the authority of the rules framed under this Act (Act of 1879) while he has no such power, his proceedings and orders are liable to be called for and examined and set aside by the Chief Court in the exercise of its criminal revisional jurisdiction on the application of the party aggrieved. 21 P.R. 1886 (Cr.). **K**

(4) **Chief Court—Power to interfere in extradition orders.**

The Chief Court (Punjab) has no power to interfere in respect of a warrant issued by a Political Agent of a Native State on the ground, (1) either that there is no *prima facie* case against the petitioner, or (2) that the circumstances under which that officer was originally moved do not justify him to exercise his power under the said section. 36 P.W.R. 1908 (Cr.) = 9 Cr. L.J. 3 = 3 P.R. 1909 (Cr.). **L**

1.—"Extradition offence."

(1) Power to alter charge for which accused was extradited.

Where the accused, subjects of His Highness the Gaekhwar of Baroda, were extradited for committing dacoity in British India and a Magistrate who held a preliminary enquiry committed them to the Sessions Court on a charge under S. 398, I.P.C., but the Sessions Judge amended the charge to one under S. 395, I.P.C., on the ground that as the accused had been extradited on a charge under S. 395 they could be tried only under that section and under no other and, finding that the accused were guilty of theft only and not dacoity, acquitted them, *held* that it was competent to the Sessions Judge to alter the charge. The accused were convicted of the minor offence which the evidence established. 17 B. 369. **M**

(2) Extradition on one offence—Validity of charge for another offence.

Extradition is only a means of bringing the accused before the tribunal having jurisdiction and extradition proceedings could never limit the jurisdiction of the Court if there is nothing on the face of the proceedings to warrant the conclusion that any limitation has been imposed; and the mere circumstance that one offence alone was mentioned when extradition was demanded does not necessarily lead to the conclusion that the extradition was allowed for the purpose of a trial only on that charge and on no other. 17 B. 369. **N**

(3) Demanding extradition for one offence while intending to charge for another.

Where a person, whose extradition is being demanded, resists an order being made on the ground that the offence alleged against him is a political offence, he must show that the offence said to have been already committed by him and in respect of which his extradition is being demanded, is of that character. He cannot be allowed to contend that the demanding State while claiming his delivery for one offence is really intending him to try for another. *In re* Arton, 1 Q. B. 108. **O**

2.—"Shall act in pursuance of such warrant."

(1) Warrant of Political Agent—Necessity for enquiry before issuing it.

There is no provision in this Act or the Crim. Pro. Code or in any other law, making an inquiry by a competent British Court in British India into the truth of the accusation, whether in the presence of the accused or otherwise, a condition precedent to the issue and execution of the warrant of a Political Agent under S. 7 of this Act. *Per Aston, J,* 7 Bom. L.R. 463 = 2 Cr. L.J. 439. **P**

(2) Magistrate—Power to question authority or discretion of Political Agent

Under the provisions of this Act, except in the case of a British European subject, the Political Agent for the Bhopal State may, at the request of the State, issue a warrant for the arrest of any person who has committed or is supposed to have committed in the Bhopal State an offence (S. 409, I.P.C.) mentioned in the Schedule annexed to the Act, and on such person being forwarded, it will be the duty of the Political Agent to decide whether the accused shall be tried by him or be made over to the State Courts for trial. It matters not whether a complaint has been made in the

2.—"Shall act in pursuance of such warrant"—(Concluded).

Political Agent's Court or not, and the Magistrate to whom the warrant is directed is bound under the provisions of S. 12 to execute it and has no power to question the authority or the discretion of the Political Agent to issue it. 5 O.C. 55. **Q**

(3) **Magistrate issuing warrant not within local limits of jurisdiction.**

A Magistrate issuing a warrant need not be within the local limits of his jurisdiction at the time of issuing it and he might issue such warrant from a place in foreign territory. 1 B. 340. **R**

3.—"Delivered to the person or authority indicated in the warrant."

(1) **Consent of State of which accused is subject, to illegal arrest.**

Where the arrest of an accused person is illegal, such person has, on appearance, the right to insist upon the illegality and upon the legal consequences thereof whether the State of which he is a subject may have consented to the illegality or not. 7 Bur. 83. **S**

(2) **Trial after illegal arrest, validity of.**

Where the accused was first arrested by a constable of the Jeypore State and then by a British Police constable in the Residency at Jeypore and brought to Rangoon, *held* that, as the arrest was made outside British India at a place where the Police officer had no authority to make such arrest, it was illegal, and further proceedings against the accused ought to be stayed, and he should be replaced in the same position in which he was. 7 Bur. 83. **T**

(3) **Property stolen outside British India received in British India.**

Where the accused were charged in the Court of the Deputy Commissioner of Girgaon with receiving property stolen in the commission of a dacoity in Indore but it appeared that the property was received in British India, *held* that the accused could not be surrendered under the warrant of the Political Agent at Indore. 14 P.R. 1873 (Cr.). **U**

Release on giving security.

8. (1) Where a Political Agent has directed by endorsement [1] on any such warrant that the person for whose arrest it is issued may be released on executing a bond with sufficient sureties for his attendance before a person or authority indicated in this behalf in the warrant at a specified time and place the Magistrate to whom the warrant is addressed shall on such security being given release such person from custody.

Magistrate to retain bond.

(2) Where security is taken under this section, the Magistrate shall certify the fact to the Political Agent who issued the warrant, and shall retain the bond.

Re-arrest in case of default.

(3) If the person bound by any such bond does not appear at the time and place specified, the Magistrate may, on being satisfied as to his default, issue a warrant directing that he be re-arrested and handed over to any person authorized by the Political Agent to take him into custody.

Deposit in lieu of bond, and forfeiture of bonds.

(4) In the case of any bond executed under this section, the Magistrate may exercise the powers conferred by the Code of Criminal Procedure for the time being in force in relation to taking a deposit in lieu of the execution of a bond and with respect to the forfeiture of bonds and the discharge of sureties.

(Note).

1.—"Has directed by endorsement."

Bail, power to order, in the absence of endorsement on warrant.

Where a person was arrested upon a warrant issued by a Political Agent and was placed before a Magistrate and such Magistrate passed an order releasing him on bail and directing him to appear before the Political Agent on a certain date although there was no endorsement on the warrant giving the Magistrate power to pass such an order, *held* that, in the absence of such an endorsement, the Magistrate had no authority to pass such an order. 7 C.L.J. 171=7 Cr. L.J. 198=12 C.W. N. 602. **Y**

Requisitions by States not being Foreign States.

9. Where a requisition is made to the Government of India or to any Local Government by or on behalf of any State not being a Foreign State, for the surrender of any person accused of having committed an offence in the territories of such State, such requisition shall (except in so far as relates to the taking of evidence to show that the offence is of a political character or is not an extradition crime) be dealt with in accordance with the procedure prescribed by section 3 for requisitions made by the Government of any Foreign State as if it were a requisition made by any such Government under that section:

Provided that, if there is a Political Agent in or for any such State, the requisition shall be made through such Political Agent.

Power to Magistrates to issue warrants of arrest in certain cases.

10. (1) If it appears to any Magistrate of the first class or any Magistrate empowered by the Local Government in this behalf that a person within the local limits of his jurisdiction is accused or suspected of having committed an offence in any State not being a Foreign State and that such person may lawfully be surrendered to such State, or that a warrant may be issued for his arrest under section 7, the Magistrate may, if he thinks fit, issue a warrant for the arrest of such person on such information or complaint and on such evidence as would, in his opinion, justify the issue of a warrant if the offence had been committed within the local limits of his jurisdiction.

Issue of warrant to be reported forthwith.

(2) The Magistrate shall forthwith report the issue of a warrant under this section, if the offence appears or is alleged to have been committed in the territories of a State for which there is a Political Agent, to such Political Agent and in other cases to the Local Government.

Limit of time of detention of person arrested.

(3) A person arrested on a warrant issued under this section shall not, without the special sanction of the Local Government, be detained more than two months, unless within such period the Magistrate receives an order made with reference to such person in accordance with the procedure prescribed by section 9 or a warrant for the arrest of such person under section 7.

Bail.

(4) In the case of a person arrested or detained under this section, the provisions of the Code of Criminal Procedure for the time being in force relating to bail shall apply in the same manner as if such person were accused of committing in British India the offence with which he is charged.

Surrender of person accused of, or undergoing sentence for offence in British India.

11. (1) A person accused of an offence committed in British India, not being the offence for which his surrender is asked, or undergoing sentence under any conviction in British India, shall not be surrendered in compliance with a warrant issued by a Political Agent under section 7 or a requisition made by or on behalf of any State not being a Foreign State under section 9, except on the condition that such person be re-surrendered to the Government of India or the Local Government, as the case may be, on the termination of his trial for the offence for which his surrender has been asked :

Provided that no such condition shall be deemed to prevent or postpone the execution of a sentence of death lawfully passed.

Suspension of sentence on surrender.

(2) On the surrender of a person undergoing sentence under a conviction in British India, his sentence shall be deemed to be suspended until the date of his re-surrender, when it shall revive and have effect for the portion thereof which was unexpired at the time of his surrender.

Application of Chapter to convicted persons.

12. The provisions of this Chapter with reference to accused persons shall, with any necessary modifications, apply to the case of a person who, having been convicted of an offence in the territories of any State not being a Foreign State, has escaped into or is in British India before his sentence has expired.

Abetment and attempt.

13. Every person who is accused or convicted of abetting or attempting to commit any offence shall be deemed, for the purposes of this Chapter, to be accused or convicted of having committed such offence, and shall be liable to be arrested and surrendered accordingly.

Lawfulness of custody and re-taking under warrant issued under Chapter.

14. It shall be lawful for any person to whom a warrant is directed in pursuance of the provisions of this Chapter, to receive, hold in custody and convey the person mentioned in the warrant, to the place named in the warrant, and, if such person escapes out of any custody to which he may be delivered in pursuance of such warrant, he may be re-taken as a person accused of an offence against the law of British India may be re-taken upon an escape.

Power of Government to stay proceedings and discharge person in custody.

15. The Government of India or the Local Government may, by order, stay any proceedings taken under this Chapter, and may direct any warrant issued under this Chapter to be cancelled, and the person for whose arrest such warrant has been issued to be discharged.

Application of Chapter to offences committed before its commencement.

16. The provisions of this Chapter shall apply to an offence or to an extradition offence, as the case may be, committed before the passing of this Act, and to an offence in respect of which a Court of British India has concurrent jurisdiction.

Receipt in evidence of exhibits, depositions and other documents.

17. (1) In any proceedings under this Chapter, exhibits and depositions [1] (whether received or taken in the presence of [2] the person against whom they are used or not) and copies thereof, and official certificates of facts and judicial documents stating facts, may, if duly authenticated, be received as evidence.

Authentication of the same.

(2) Warrants, depositions or statements on oath which purport to have been issued, received or taken by any Court of Justice outside British India, or copies thereof, and certificates of, or judicial documents stating the fact of,

conviction before any such Court, shall be deemed duly authenticated,—

(*a*) if the warrant purports to be signed by a Judge, Magistrate or officer of the State where the same was issued or acting in or for such State:

(*b*) if the depositions or statements or copies thereof purport to be certified, under the hand of a Judge, Magistrate or officer of the State where the same were taken, or acting in or for such State, to be the original depositions or statements or to be true copies thereof, as the case may require:

(*c*) if the certificate of, or judicial document stating the fact of, a conviction purports to be certified by a Judge, Magistrate or officer of the State where the conviction took place or acting in or for such State:

(*d*) if the warrants, depositions, statements, copies, certificates and judicial documents, as the case may be, are authenticated by the oath of some witness or by the official seal of a minister of the State where the same were respectively issued, taken or given.

Definition of "warrant."

(3) For the purposes of this section, "warrant" includes any judicial document authorizing the arrest of any person accused or convicted of an offence.

(Notes).

1.—"Depositions."

Evidence taken by British Consul at Zanzibar, validity of.

A prisoner being charged with having committed murder at Zanzibar, the British Consul there held a preliminary enquiry and sent the prisoner for trial before the Bombay High Court. The Consul having no power to require witnesses to attend to give evidence at Bombay transmitted the depositions taken by him during the enquiry. Objections were raised that the depositions were inadmissible, as the Consul had no power to take them in a case of murder. *Held* that the Consul was authorised by law to take the depositions of witnesses in this case and that they were admissible in evidence at the trial under S. 33, Evidence Act. 3 B. 334. **W**

2.—"In the presence of."

Accused, presence of, at the time of enquiry before extradition.

In all cases where enquiries are held by Magistrates with a view to extraditing accused persons, it would be desirable that they should if possible be present thereat. 7 Bom. L.R. 463=2 Cr.L.J. 439. **X**

Chapter not to derogate from treaties.

18. Nothing in this Chapter shall derogate from the provisions of any treaty [1] for the extradition of offenders, and the procedure provided by any such treaty shall be followed in any case to which it applies, and the provisions of this Act shall be modified accordingly.

(Notes).

General.

I.—CASES OF BRITISH SUBJECTS COMMITTING OFFENCES OUTSIDE BRITISH INDIA.

(1) **Trial of Native Indian subjects for offence outside British India.**

Where Native Indian subjects of Her Majesty were charged with committing offences at a place beyond the limits of British India, *held*, that they could be dealt with in respect of such offences as if they had been committed at any place in British India at which they were found. If there is no Political Agent no certificate is necessary. 13 B. 147. **Y**

(2) **British Court—Jurisdiction to try British soldier for offence in Native State.**

Where a soldier in Her Majesty's Indian Army while serving with his Regiment in Cyprus, a Native State, committed murder and was charged with that offence at Agra after his return with the Regiment, *held* that the Criminal Courts of Agra had jurisdiction to try the case. *Per Stuart*, C.J., *contra*, Cyprus is not a foreign or a Native State. 2 A. 218. **Z**

(3) **Magistrate in whose jurisdiction foreigner is found, jurisdiction of.**

Although a servant of the Queen because of his employment in the British Government is subject to punishment under the Indian Penal Code for any offence committed within the dominions of any State in alliance with the Queen notwithstanding the fact that he is not a Native Indian subject of Her Majesty, it does not follow that the Magistrate of the place in whose jurisdiction he is found has jurisdiction to try him for the offence committed in a foreign State. 16 B. 178. **A**

(4) **High Court of Bombay —Power to try offence committed at Zanzibar.**

The High Court of Bombay can try a prisoner charged with having committed a murder at Zanzibar and sent by the British Consul there to Bombay. 3 B. 334. **B**

(5) **Jurisdiction to try offence committed in foreign territory by British subjects.**

Where two British subjects committed murder in an independent territory, *held*, they could be tried in British Courts, as Native Indian subjects of Her Majesty are amenable to the British Courts in respect of offences committed by them in all territories beyond India. 29 P.R. 1878 (Cr.). **C**

(6) **Magistrate trying accused without certificate, legality of.**

In the absence of the certificate or sanction required under S. 188, Cr.P.C., a Magistrate has no jurisdiction to try an accused for an offence committed outside British India. 24 B. 287 = 1 Bom. L.R. 678. **D**

General—(*Continued*).

(7) **Trial without Political Agent's certificate, validity of.**

A charge of kidnapping committed in Nepal cannot be enquired into in British India without the Political Agent's certificate. 19 A. 109. **E**

(8) **Commitment without Political Agent's certificate, validity of.**

A commitment made without the Political Agent's certificate as required by S. 188, Cr. P.C., is *ultra vires* and all proceedings taken by a Judge on such commitment are wholly void. 2 Weir 148. **F**

(9) **Want of certificate of Political Agent, effect of.**

Where a District Magistrate who was himself the Political Agent of a foreign territory, initiated criminal proceedings against a Native Indian subject of Her Majesty, in a British Court, for an offence committed in the foreign territory, without the certificate mentioned in S. 188, *held* that the certificate was a preliminary requisite to the inquiry and any subsequent production of the certificate signed by the District Magistrate would not validate the trial nor could the defect be cured by S. 532, Cr.P.C. 13 M. 423. **G**

(10) **Sanction of Local Government—Offence committed outside British India.**

Where an offence took place outside British India, a British Indian Magistrate has no jurisdiction to try the offence without a certificate from the Political Agent of that place. Where there is no Political Agent, a Native Indian subject may be tried within the limits of British India under the sanction of the Local Government. 24 B. 287. **H**

(11) **Amendment of charge when Political Agent's certificate specifies offence.**

Where the certificate of the Political Agent specifies the offence with which the accused is charged, the Sessions Judge is competent to amend the charge under the Cr. P.C. Rat. Unrep. Cr. C. 773. **I**

(12) **Native Indian subject of Her Majesty, interpretation of term.**

A person born in the Baroda State of a father who was presumably a subject of His Highness the Gaekhwar, since the father was resident in Baroda State and was not shown to have been born outside that State is not a Native Indian subject of Her Majesty, although both the father and the son have occasionally lived in British territory. The term Native Indian subject of Her Majesty must be construed strictly and cannot be held to include servants of Her Majesty. 16 B. 178. **J**

(13) **Native Indian subject, proof of being, necessary before trial.**

Where the accused, while admitting that he caused the death of a person, qualified his plea by the statement that the said act was not an offence as he committed it outside British territory, and the Sessions Judge, treating the admission as a plea of guilty, convicted the accused and sentenced him to death, without appointing assessors, *held* that the accused's plea was circuitous plea of not guilty entitling him to a regular trial with the aid of assessors in which it would be necessary to take evidence upon the question whether the accused was a Native Indian subject of Her Majesty. 22 P.R. 1883 (Cr.). **K**

(14) **Offence committed outside British India, liability for.**

It is essential, in order to establish the liability of an accused to be punished under the Penal Code for an act of homicide committed beyond the

General—(*Continued*).

limits of British India, to establish that he was a Native Indian subject of Her Majesty, and the mere circumstances that the accused owned some land in British territory and occasionally resided in British India, do not, of themselves, constitute him a Native Indian Subject of the Queen, nor render him liable to be dealt with under the Penal Code for an act committed beyond the limits of British India. 22 P.R. 1883 (Cr.). **L**

(15) **Native subject of Her Majesty, meaning of.**

The term Native subject of Her Majesty means only Native subjects *de jure* and not *de facto*, and occasional residences in British territory cannot be taken to render a person who is not *de jure* a subject, a subject for the purposes of criminal jurisdiction being exercised over him for an act committed by him in foreign territory which if committed within British territory would have been an offence cognisable by the Municipal Courts. 1 P.R. 1885 (Cr.). **M**

(16) **Illicit possession of opium, outside British India, Legality of, conviction for.**

When the accused was convicted by the District Magistrate of Gurgaon on a charge of illicit possession of opium by taking delivery of 4 maunds of poppy seeds at the Railway Station of Bamal on the Rajputana Malway Railway and the Sessions Judge on appeal acquitted the accused on the ground that the Act (I of 1878) forbade only the importation of opium "into the Punjab and that Bamal was not in the Punjab," *held* that the Act (I of 1878) was in force in Bamal under the terms of the Extradition Act (Ss. 4 and 5 of Act of 1879). 8 P.R. 1887 (Cr.). **N**

(17) **Jurisdiction to try offence in territory subsequently annexed by the British Government.**

Where a person after having committed dacoity attended with murder absconded to Bhootan which was subsequently annexed by the British Government, *held* that he could be tried and convicted for the offence by the British Courts. 2 W.R. 49 (Cr.). **O**

(18) **British Court—Jurisdiction to try offence committed in Native State.**

Where a Native Indian subject of Her Majesty committed an offence in the territory of a Native State in alliance with Her Majesty and was discovered in the territory of another similar State and from there brought down or came of his own accord to Ahmedabad and a certificate was granted by the Political Agent that the offence ought to be enquired into in British India and a Magistrate at Ahmedabad holding a preliminary inquiry committed him to the Sessions, *held* the Sessions Court at Ahmedabad had jurisdiction, under this section, to try the offence as if it had been committed in Ahmedabad, for when the accused was brought from foreign territory to Ahmedabad, he was found, at a place in British India as the expression 'found' must be taken to mean not where a person is discovered, but where he is actually present. 6 B. 622. **P**

(19) **Power to make enquiry before sending case to District Magistrate.**

Where an offence was suspected to have been committed by a Native British subject in a place without and beyond the Indian territories under Her Majesty and the offenders arrested in British territory under the

General—(*Continued*).

authority of a warrant from a Magistrate, *held* that the Magistrate was authorised to complete the enquiry himself and it was unnecessary for him to send the accused to the District Magistrate as the certificate required had been duly furnished by the Political Agent. Rat. Unrep. Cr. C. 97. **Q**

II.—OFFENCE COMMITTED ON HIGH SEAS.

(1) **Offence committed on high seas—Procedure and punishment.**

The provisions of 12 & 13 Vic., C. 96, are extended to India by 23 & 24 Vict., C. 88, and hence persons charged with crimes on the high seas can be proceeded against in the Courts of British India as if the offence had been committed in British India, but on conviction, they are to be punished as if the offence had been committed in England. The English law was held to be the substantive law of decision in cases made cognisable by the local tribunals by virtue of that Statute. 1 B.H.C.R. 89 (Cr.); 1 B.L.R. 1. **R**

(2) **Offence committed on sea, jurisdiction of British Courts to try.**

The accused, the Captain of a native craft, was charged with having dishonestly sold his cargo at Sukeri, close to Goa, and scuttled his ship 3 miles on the coast of Goa in the course of a voyage from Aleppy to Bombay. The accused was arrested in the Ratnagiri District and convicted by the Sessions Judge of Ratnagiri. *Held* that as the offence was committed within 3 miles from Goa, British Indian Courts had jurisdiction. *Held* also that even if the offence were committed on the high seas the Sessions Court at Ratnagiri had jurisdiction under Statutes 30 & 31 Vict., c. 124, S. 11, and 37 & 38 c. 27. 14 B. 227. **S**

(3) **Children born in English ship on high seas.**

Every ship so long as it is in the high seas is part of the territory of the country whose flag it flies. So a child born on an English ship is considered for all legal purposes as born in England. *Marshall* v. *Murga troyd*, L.R. 6 Q.B. 31. **T**

(4) **Admiral, jurisdiction of.**

(i) An Admiral has jurisdiction over offences committed in an English ship lying in the Garonne, ninety miles from the sea. *Reg* v. *Anderson*, L.R. 1 C. C. 161. **U**

(ii) Admiralty jurisdiction was held to apply to all on board on English ship which was moored to the quay at Rotterdam and was as completely within the port as a ship would be if lying in the pool below London Bridge or in the Hooghly opposite Calcutta. *Reg* v. *Carr*, 10 Q.B D. 76. **V**

(iii) An Admiral has jurisdiction over offences committed in an English ship lying at Wampu, in China, twenty or thirty miles from the sea. *Reg* v. *Allen*, 1 Mood. C.C. 494. **W**

iv) Admiralty jurisdiction only takes cognisance of acts committed on the sea and in respect of crimes only of those which become complete at sea. The Admiral has no jurisdiction over murder where the wounding was on sea but the death happened on shore. 1 Hale P.C. 17. **X**

(v) Where a river bay or arm of the sea extends inland in such a manner that the space covered with water could properly be considered as an

General—(*Continued*).

actual portion of the country, the portions on each side should be considered to extend to the middle of the intervening water, whether it is tidal and navigable or not. In such a case the jurisdiction of the admiral is ousted. 2 East P.C. 803. **Y**

(5) **High seas, offence committed in—Applicability of Penal Code.**

Where the accused, the master and carpenter of a British ship were indicted for wilfully destroying it by fire on its voyage from Bombay to Liverpool when it had proceeded about fifty miles on its way, *held* that the Penal Code could not be applied for offence committed on the High seas more than three miles from the shore and that the English Law should be applied. 7 B.H.C.C.C. 89. **Z**

(6) **Offence committed on high seas, trial of—Procedure to be followed.**

The trial of a British seaman for an offence committed on British ship on the high seas must be conducted under the Code of Criminal Procedure, though the offence charged must be an offence under English Law. 21 C. 782 ; 16 C. 238. **A**

(7) **Offence committed on sea within 3 miles of shore—Applicability of Penal Code.**

The removal of fishing stakes fixed in the sea within three miles of the shore is an offence under the Penal Code and punishable in India as the territories of India extend to three miles from the shore and therefore the Penal Code is applicable to such an offence. 8 B.H.C.C. C. 67. **B**

(8) **Bombay High Court, admiralty jurisdiction of.**

The jurisdiction of the Bombay High Court on its Admiralty side is the same as that exercised in the Court of Admiralty in England prior to the passing of 3 & 4 Vict., C. 65, Ss. 6-24. 5 B.H.C. (O.C.J.) 64. **C**

(9) **Presidency Magistrate, jurisdiction of, to try offence committed on high seas.**

The Presidency Magistrate has authority to commit a person who committed an offence on a British ship during her voyage on the high seas. 3 Bom. L.R. 253 ; 25 B. 636. **D**

(10) **British subjects—Meaning of.**

The words "British subject" ordinarily mean a person who owes allegiance to the British Crown by birth or naturalization. *Reg.* v. *Manning*, 2 C. & K. 900. **E**

(11) **His Majesty's subject—Meaning of.**

The words "His Majesty's subject" and "British subject" are synonymous terms. *Reg.* v. *Azzopardi*, 2 C. & K. 203. **F**

(12) **Common Law Courts—Jurisdiction of.**

The Common Law Courts have no jurisdiction in cases of offences committed on seas, beyond the limits of the country which only extends to low water mark. Beyond these limits the jurisdiction of the admiral is exclusive. 2 Hale P.C. 12. **G**

(13) **Intervening space of sea, part of adjoining country when.**

An intervening space of sea can be considered a part of the adjoining country for purpose of jurisdiction when a man standing on one side of the land may see what is done on the other. 2 East P.C. 804. **H**

General—(*Continued*).

(14) **Territorial jurisdiction over merchantship on high seas.**

The rule that a merchantship on the high seas is floating territory of its own nation is qualified when it enters any foreign river or harbour which is completely a part of that foreign territory. In such a case while the national jurisdiction remains the territorial jurisdiction attaches to the ship and all on board of it. *The Schooner Exchange* v. *Mc. Haddon*, 7 Cranch X 144. I

(15) **Piracy *jure gentium*, what is.**

(i) The mere committal of robbery or murder by a person on board of, or belonging to, a vessel which at the time in point of fact as well as right is the property of the subjects of a foreign state who have at the time in virtue of this property the control of the vessel, is not piracy *jure gentium* It may be punishable as such by the nation which has jurisdiction over the ship but not by other nations. *United States* v. *Khintock*, 5 Wheaton 144. J

(ii) When offences are committed by those on board the vessel by overpowering the master and obtaining possession of the vessel or its contents, they will amount to *piracy gentium*, unless they are acting *bona fide* under any justifying authority or for any justifiable cause. *United States* v. *Pirates*, 5 Wheaton 184. K

(16) **Piracy by foreigner, jurisdiction of British Court.**

(i) Offences which are constituted piracy by Municipal Law even by Act of Parliament, can confer no jurisdiction over foreigners and it makes no difference that they are committed within three mile limit. *United States* v. *Kessler*, Bald 15. L

(ii) Foreign vessels seized wrongfully for piracy under Act of Parliament must be released unless sanctioned by treaty and those who resist seizure are not punishable criminally. The Louis, 2 Dodson Adm., 239. M

III.—OTHER CASES OF FOREIGNERS, ETC.

(1) **British Court—Jurisdiction to try foreigner.**

(i) No foreigner can ever be liable to any British jurisdiction for any offence committed by him on land out of British dominions even though the act committed by him takes its operation within British territory. Even the Statutes which give a tribunal jurisdiction over an offender found within its limits in respect of an act began outside those limits which has produced its effects within the limits does not apply to the case of a foreigner. 10 B.H.C. 356; 7 M.I.A. 72. N

(ii) When an American on board an American vessel inflicted injuries on a German who died from them after the arrival of the ship in Liverpool, *held* the Court in England had no jurisdiction as the injury was inflicted beyond the jurisdiction. *Reg.* v. *Lewis*, 20 L.J. M.C. 164. O

(2) **Crime committed in a country—Jurisdiction of that country to try.**

Whatever rights civil or otherwise a man may have which may be affected by his domicile it is and must be perfectly clear by the law of all

General—(*Continued*).

nations that each person who is within the jurisdiction of the particular country in which he commits a crime is subject to that jurisdiction; otherwise the Criminal law could not be administered according to any civilised world. *Rey.* v. *Ganz*, 9 Q.B.D. 93 (100). **P**

(3) **General rule of international law.**

There is nothing in S. 181, Cr.P.C., which contravenes the general rule of international law that no Court has jurisdiction over foreigners in respect of offences committed in a foreign state. 1 P.R. 1901 (Cr.). **Q**

(4) **British Court, jurisdiction of, to try offence by foreign subject.**

Where the dacoity of which the accused were convicted was found to have been committed in a foreign state outside the limits of British India, and the accused themselves were foreign subjects, natives of a foreign state, who had resided in the British territory only for about three years, *held* that the accused were not liable to be tried by a British Court for the said act of dacoity under this Act or any other law in force and their act was therefore not an offence for which they were liable to be dealt with under S. 3, I P.C. 37 P.R. 1881 (Cr.). **R**

(5) **Breach of contract in foreign territory—Jurisdiction of British Court.**

The accused, having contracted in a foreign territory to labour for the complainant in British territory, broke his contract. He was arrested in foreign territory, brought to British territory, and tried. *Held* that the British Court had no jurisdiction, both the contract and the breach having taken place in foreign territory. 7 M. 354; 10 M. 21. **S**

(6) **British Court's jurisdiction to try offence committed outside.**

Where a girl was enticed away in the Faridkot State from the lawful guardianship of her husband by the accused who were foreign subjects and was found being conveyed by them by rail from that State to a station in the Bhawalpore State at the railway station of Abdhar in the British territory, *held* that as the act of kidnapping was complete outside British India, the British Courts had no jurisdiction to try and convict the accused. 1 P.R. 1901 (Cr.); 2 P.L.R. 473. **T**

(7) **Supreme Court of Calcutta, jurisdiction to try Burmese Native Subjects.**

Some Burmese native subjects of the East Indian Company committed a murder on the Coco islands which are uninhabited islands in the Bay of Bengal within the Charter which was held to mean the Trading Charter of the East India Company. They were convicted (under Statute 9 Geo. IV) by the Supreme Court of Calcutta; but this conviction was reversed by the Privy Council on the ground that the place in which the offence was committed was, but that the offenders personally were not, within the jurisdiction conferred by the Statute. *Held* also that the object of the Statute was only to apply the law, which had been enacted in England as to an offence partly committed in one part and partly completed in another, to the East Indies and not to make a new enactment rendering persons liable, for a complete offence, who would not have been liable before. 7 M.I.A. 72. **U**

(8) **Abetment in foreign territory of offence in British India.**

A subject of a Native State who by acts done in that State and not in British territory abets the commission of an offence in British territory is not liable to be punished under the Penal Code by the Courts of British India even if he afterwards be in British India. 10 B.H.C. 356; 20 P.R. of 1878. **V**

General—(*Concluded*).

(9) **Offence committed in foreign vessel in foreign jurisdiction**

Where an American committed an offence in a foreign vessel subject to foreign jurisdiction and the act was not a piratical act, *held* the American Court had no jurisdiction to try the offence. *United States* v. *Davies*, 2 Swinner 482. **W**

(10) **Surrender of foreigner by British Government.**

An American, who was charged with piracy committed on an American vessel, and who was in British custody could not be surrendered under a treaty of extradition with the United States. *Reg.* v. *Vernam*, 33 L.J. M.C. 201. **X**

(11) **Act lawful in foreign country but an offence in England.**

Where by the law of another country, an act complained of is lawful, such an act though it would have been wrongful under the British law cannot be made the ground of an action in an English Court. *Philips* v. *Eyre*, 4 Q.B. 239. **Y**

(12) **Punishment to follow the law under which the charge is preferred.**

Where the charge of an offence has been preferred under English law but tried under the procedure of Indian law, the punishment must be according to English law. 1 B.L.R. (Cr.) 1. **Z**

N. B.—For local rules and orders refer to the Appendix.

1.—"Of any treaty"

(1) **Extradition to be regulated according to terms of treaty.**

A treaty with China bound the Government of Hong-kong to surrender any Chinese subject who has committed or is charged with having committed any crime or offence against the laws of China. *Held* by the Judicial Committee, that these words ought to be limited to those ordinary crimes and offences which are punishable by the laws of all nations and which are not peculiar to the laws of China. *Atty-Genl. of Hong-kong* v. *Kwok-A-Singh*, L.R. 5 P.C. 198. **A**

(2) **Extraditions against terms of treaty, validity of.**

Where an extradition treaty by express terms as in the treaties with France and Portugal forbids the delivery over of a naturalised or natural born subject of the State on which the demand is made no such delivery can be made by virtue of the treaty and a Court which has power to test the legality of the extradition will discharge the prisoner. *Reg.* v. *Wilson*. 3 Q B.D. 42. **B**

(3) **Jurisdiction between different states, how founded.**

(*a*) No state can, as a matter of right, claim jurisdiction of any kind within territorial limits of another independent state, and between two Christian States all claims for jurisdiction of any kind or exemption from jurisdiction must be founded on treaty or engagements of similar validity. S.C. 2 Moo. P.C. (N.S.) 181. **C**

(*b*) Extradition as between the British Government and Non-Asiatic States is granted only by virtue of some treaty which again requires an Act of Parliament or a Local Act to give effect to it. *Per Mellish*, L.J , L.R. 5 P.C. 189. **D**

1.—" Of any treaty "—(Continued).

(c) The inconvenience of being unable either to try at home or to give up an undesirable subject who has committed a crime abroad has led to the substitution in later treaties of words providing that the parties shall not be bound to surrender their own subjects. This makes compliance with the demand optional. *In re* Galway, 1 Q B. 230. E

(d) The modern practice in extradition treaties is to name specifically the offences for which the parties undertake to deliver up offenders to each other. In such cases no extradition can be granted unless the facts alleged constitute an offence against the laws of the harbouring as well as of the claimant party within the terms of the treaty. It is not sufficient that the same name is given by each state to different things. *Re Windsor*, 34 L.J. M.C. 163 ; *Re Bellencontre*, 2 Q.B. 122. F

(4) **Jurisdiction of Governor-General of India outside the limits of British India.**

The jurisdiction of the Governor-General of India outside the limits of British India over Native States is founded upon and limited by their assent express or implied and is not derived from either Indian or Imperial Foreign Jurisdiction Acts which start with the assumption that it already exists. 24 I.A. 137=25 C. 20=2 C.W.N. (P.C.). G

(5) **Offence committed in foreign territory—Jurisdiction of British Court.**

Where rice was entrusted at Mangalore to the accused the master of a ship for conveyance to a person at Calicut and the accused after getting to sea instead of taking his ship to Calicut went off to Goa and there sold the rice, *held* that the Sessions Court of Mangalore had no jurisdiction as the offence was committed outside British India and there was no offence committed on the high seas inasmuch as the act of conversion did not take place till Goa was reached although the intention to commit the offence and the act of duration from the course with that intention took place on the high seas and that for want of certificate from Political Agent of Goa, the trial and conviction were illegal. 5 M. 23. H

(6) **Offences committed in foreign states—Jurisdiction of British Courts.**

Proceedings can be taken in British India regarding offences committed in foreign states only on condition that the person charged is a native Indian subject of Her Majesty and that the Political Agent of the Foreign State has given his sanction to proceedings being taken in British territory. 5 M. 23. I

(7) **Transfer of criminal case—Power of Chief Commissioner, Mysore.**

The Governor-General in Council could not by notification create the Judicial Commissioner in a Native State (Mysore) a High Court for the trial of European British Subjects and the Chief Commissioner of such Native State could not transfer from a Sessions Judge to the Judicial Commissioner any jurisdiction which the Sessions Judge did not possess. 5 M. 33. J

(8) **Committal to Court other than High Court of Madras—Power of Justice of the Peace in Mysore.**

A Justice of the Peace in Mysore, appointed by the Governor-General, under this section as a Magistrate of the first class, has no authority to commit European subjects being Christians for trial to any Court other than the High Court of Madras. 5 M. 33. K

I.—"Of any treaty"—(Continued).

(9) **Commitment to High Court of Madras of European British subject, validity of.**

This section empowers the Governor-General to direct to what Court having jurisdiction over European British subjects any Justice of the Peace was to commit for trial; but in the absence of an express notification to that effect a commitment to the High Court of Madras in cases of offences punishable with death or transporta tion for life will presum ably be a good commitment. 5 M. 33. **L**

(10) **Justice of the Peace for Bangalore, subordinate to the High Court of Madras.**

The Civil and Military station of Bangalore being a part of the Mysore State, the Civil and Sessions Judge and the District Magistrate of that place who are appointed Justices of the Peace under this section, are also Justices of the Peace for the station of Bangalore and are by virtue of this section, Magistrates of the first class subordinate to the High Court of Madras. 12 M. 39. **M**

(11) **High Court, power of, to transfer case from District Magistrate of Bangalore.**

The Code of Criminal Procedure is in force in the Civil and Military station of Bangalore by virtue of declarations made by the Governor General in Council under this Act and hence the High Court has power under S. 526 Cr. P. C. to transfer a case from the Court of the District Magistrate of Bangalore station to the Court of the Civil and Sessions Judge of that station. 12 M. 39. **N**

(12) **Justice of the Peace for Mysore—Power to try case which is not offence under I.P.C.**

A first class Magistrate and Justice of the Peace for the State of Mysore appointed under this section has power to try an European British subject or to commit him for trial to the High Court of Madras for an offence against the law of Mysore though it is not an offence under the Indian Penal Code. 26 M. 607. **O**

(13) **Arrest in Native State for offence committed in British India.**

Where the accused, a subject of His Highness the Nizam of Hyderabad was arrested on a warrant of the District Magistrate of Simla addressed to the Resident at Hyderabad for an offence committed at Simla and the accused was arrested at the Singampatty Railway station within the territories of His Highness the Nizam but also within the Railway limits over which the British Government had jurisdiction, *held* that the execution of the warrant was legal, that it was a mistake to address such warrants to the Resident instead of to one of the Magistrates, but the error was covered by S. 537 Cr.P.C., that the petitioner was a subject of His Highness the Nizam did not affect the matter, as full jurisdiction on the place where the accused was arrested had been ceded over Hyderabad as well as British subjects. 1 P. R. 1896 (Cr.) **P**

(14) **Travancore High Court, power to interfere in extradition cases.**

Where sanction to prosecute a subject of Travancore State was given in the Madras High Court Sessions for perjury and the Chief Presidency Magistrate wrote to the British Resident of Travancore to get the

1.—"Of any treaty"—(Continued).

petitioner arrested in Travancore as he had returned to Travancore in the interval and the Resident requested the Dewan for the same and in result the District Magistrate caused the petitioner to be arrested and the petitioner moved the High Court of Travancore for quashing the proceedings, *held*, the High Court was empowered to interfere in any case and at any stage of any case, with any proceedings or order passed by a Magistrate as such and also there could be no act of state between a Sovereign and his subject. 21 T.L.R. 85. **Q**

(15) **Extradition in non-extraditable offence, validity of.**

Where no long usages or precedents allowing the arrest and surrender of Travancore subjects who have committed offences treated as non-extraditable by the British Indian Acts have been proved to exist, the proceedings of a District Magistrate allowing the arrest should be set aside as illegal and unsupportable on any ground whatever. 21 T.L.R. 85. **R**

(16) **Nizam's territory—Power to execute criminal process in.**

The territory on which the Nizam's State railway is constructed has been and continues to be part of the dominions of the Nizam. The authority therefore to execute any criminal process there must be derived in some way or another from the Nizam. Notification in the Gazette of India by the Government of India could give no such authority but it could only give effect to the extent in which the Nizam had permitted the British Government to make the notification. 25 C. 20 = 24 I. A. 137 = 2 C.W.N. 1 (**P.C.**). **S**

(17) **Arrest on foreign railway for offence in British India, legality of.**

Where the only jurisdiction that has been granted by a Native State is civil and criminal jurisdiction along the line of railway as in the case on other lines running through Independent States, an arrest of a person for an offence committed in British territory and not committed on the Railway or in any way connected with the administration of the Railway merely because he was physically present on a portion of that line of the Railway would not be legal. 25 C. 20 = 24 I.A. 137 = 2 C. W.N. 1 (**P. C.**). **T**

(18) **Mysore State—Power to legislate in criminal matters regarding European British subjects.**

The words "Plenary criminal jurisdiction over European British subjects" in paragraph 17 of the Instrument of Transfer of Mysore mean only to administer the law and not to legislate in criminal matters. 26 M. 607. **U**

(19) **Right and power of control of British Government over Native States.**

Of the rights and powers of control possessed and exercised by the British Government over the Native States in India with the corresponding restrictions on the independent action of those States some are the necessary consequence of the suzerainty vested in the predominant power. But apart from and beyond the consequences flowing from that general source rights of varying kinds and different historical origin have been acquired in connection with the several States so that in each instance in which the nature or extent of such rights becomes the

1.—"Of any treaty"—(Concluded).

subject of consideration inquiry has to be made into the circumstances of each particular case. 33 C. 219 (P.C.)=10 C.W.N. 361=16 M.L.J. 115=8 Bom. L.R. 129=3 A.L.J. 250=1 M.L.T. 115=33 I.A. 1=3 C. L.J. 395. **Y**

(20) **District Magistrate of Mysore trying European British subject.**

The special qualification necessary to give a Magistrate jurisdiction over a European British subject is that he must be a Justice of the Peace and also a European British subject. A District Magistrate in a Native State (Mysore) who is neither a Justice of the Peace nor a European British subject is therefore incompetent to try a European British subject. The powers conferred on Magistrates in Mysore are powers auxiliary to the administration of justice, powers to apprehend offenders and to bind them over to appear before competent tribunals but not to sit in judgment over them. 5 Mysore Rep. 281. **W**

(21) **High Court, appellate power regarding persons other than European British subject.**

Neither the Criminal Procedure Code nor any other law in force in India confers on the High Court of Bombay an appellate criminal jurisdiction over persons not European British subjects convicted in the territories of the Nizam. 14 B. 160. **X**

CHAPTER IV.

RENDITION OF FUGITIVE OFFENDERS IN HIS MAJESTY'S DOMINIONS.

Application of Fugitive Offenders Act, 1881.

19. For the purpose of applying and carrying into effect in British India the provisions of the Fugitive Offenders Act, 1881 [1], the following provisions are hereby made:— 44 & 45 Vict., C. 69.

(*a*) the powers conferred on "Governors" of British possessions may be exercised by any Local Government.

(*b*) the powers conferred on a "Superior Court" may be exercised by any Judge of a High Court:

(*c*) the powers conferred on a "Magistrate" may be exercised by any Magistrate of the first class or by any Magistrate empowered by the Local Government in that behalf: and

(*d*) the offences committed in British India to which the Act applies, are piracy [2], treason and any offence punishable under the Indian Penal Code with rigorous imprisonment for a term of twelve months or more or with any greater punishment. XIV of 1860

(Notes).

1.—"The provisions of the Fugitive Offenders Act."

Warrant for arrest of fugitive offender, validity of.

Where a warrant was issued under S. 23 (Fugitive Foreign Offender Act) Act VII of 1854 directing an accused person to be delivered up to the Resident at Baroda, without showing that an enquiry into the guilt of the accused had been made or was about to be made, *held* that it was not invalid as the presumption was that the accused was to be delivered up to the Resident in order that that officer might institute such an inquiry and that the warrant however should recite either that an enquiry had been held or was about to be held. *Reg.* v. *Souter*, 8 Bom. Cr. 13. **Y**

2.—" Piracy."

(1) **Piracy, definition of.**

Piracy is only a sea term for robbery, being a robbery committed within the jurisdiction of the Admiralty. *Rex* v. *Dawson*, 13 State Trials 454. **Z**

(2) **Piracy, the seizure of a ship when amounts to.**

The seizure of a ship by cooly emigrants was held to be piracy though they intended to make no other use of the vessel than as a means of returning to their homes in China. *Attorney-General of Hong Kong* v. *Knok A. Sing*, L.R. 5 P.C. 180. **A**

CHAPTER V.

OFFENCES COMMITTED AT SEA.

Requisition for surrender in case of offence committed at sea.

20. Where the Government of any State outside India makes a requisition for the surrender of a person accused of an offence committed on board any vessel on the high seas [1] which comes into any port of British India, the Local Government and any Magistrate having jurisdiction in such port and authorized by the Local Government in this behalf may exercise the powers conferred by this Act.

(Notes).

1.—" On the high-seas."

Admiralty, jurisdiction of.

Where an American ship was lying in an enclosed dock in Havre into which the water was admitted at the will of the owners, *held*, that the Admiralty jurisdiction did not apply, as the place where the ship lay was in no sense the high-seas. *United States* v. *Hamilton*, 1 Mason 152. **B**

CHAPTER VI.

EXECUTION OF COMMISSIONS ISSUED BY CRIMINAL COURTS OUTSIDE BRITISH INDIA.

Execution of commissions issued by Criminal Courts outside British India.

21. The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in any country or place outside British India in like manner as it may be obtained in any civil matter under the provisions of the Code of Civil Procedure for the time being in force with respect to commissions, and the provisions of that Code relating thereto shall be construed as if the term "suit" included a criminal proceeding.

Provided that this section shall not apply when the evidence is required for a Court or tribunal in any state outside India other than a British Court and the offence is of a political character.

CHAPTER VII.

SUPPLEMENTAL.

Power to make rules.

22. (1) The Governor-General in Council may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the removal of prisoners accused or in custody under this Act, and their control and maintenance until such time as they are handed over to the persons named in the warrant as are entitled to receive them;

(*b*) the seizure and disposition of any property which is the subject of, or required for proof of, any alleged offence to which this Act applies;

(*c*) the pursuit and arrest in British India, by officers of the Government or other persons authorized in this behalf, of persons accused of offences committed elsewhere; and

(*d*) the procedure and practice to be observed in extradition proceedings.

(3) Rules made under this section shall be published in the Gazette of India and shall thereupon have effect as if enacted by this Act.

V of 1898.

Detention of persons arrested under section 54 clause *Seventhly* Act V of 1898.

23. Notwithstanding anything in the Code of Criminal Procedure, 1898, any person arrested without an order from a Magistrate and without a warrant, in pursuance of the provisions of section 54, clause *seventhly*, of the said Code, may, under the orders of a Magistrate within the local limits of whose jurisdiction such arrest was made, be detained in the same manner and subject to the same restrictions as a person arrested on a warrant issued by such Magistrate under section 10.

Repeals.

24. The Acts mentioned in the second schedule are repealed to the extent specified in the fourth column thereof.

THE FIRST SCHEDULE.

EXTRADITION OFFENCES.

[*See section 2, clause (b), and Chapter III (Surrender of Fugitive Criminals in case of States other than Foreign States).*]

[The sections referred to are the sections of the Indian Penal Code.]

Frauds upon creditors (section 206).

Resistance to arrest (section 224).

Offences relating to coin and stamps (sections 230 to 263 A).

Culpable homicide (sections 299 to 304).

Attempt to murder (section 307).

Thagi (sections 310, 311).

Causing miscarriage, and abandonment of child (sections 312 to 317).

Causing hurt (sections 323 to 333).

Wrongful confinement (sections 347, 348).

Kidnapping and slavery (sections 360 to 373).

Rape and unnatural offences (sections 375 to 377).

Theft, extortion, robbery, etc. (sections 378 to 414).

Cheating (sections 415 to 420).

Fraudulent deeds, etc. (sections 421 to 424).

Mischief (sections 425 to 440).

Lurking, house-trespass (sections 443, 446).

Forgery, using forged documents, etc. (sections 463 to 477 A).

Desertion from any body of Imperial Service Troops.

Piracy by law of nations.

Sinking or destroying a vessel at sea or attempting or conspiring to do so.

Assault on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.

Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

Any offence against any section of the Indian Penal Code or against any other law which may, from time to time, be specified by the Governor General in Council by notification in the Gazette of India either generally for all States or specially for any one or more States.

THE SECOND SCHEDULE.

ENACTMENTS REPEALED.

(*See section 24.*)

Year.	No.	Short title.	Extent of repeal.
1879	XXI	The Foreign Jurisdiction and Extradition Act, 1879. ...	So much as is unrepealed.
1895	IX	The Extradition (India) Act, 1895 ...	The whole Act.
1896	V	The Foreign Jurisdiction and Extradition Act (1879) Amendment Act, 1896. ...	The whole Act.

APPENDIX.

Local rules and orders.

(1) **Bail, taking of.**

When a prisoner has been arrested under a warrant issued under S. 14 by the Governor General in Council or any Local Government, bail cannot be taken and the person arrested must be removed in custody and delivered up at the place and to the person named in the warrant. (G. G. O. (Foreign) No 55 J. 6th May 1875.)

(2) **Cochin State. Orders made by the Governor General in Council under Act II of 1872 and 28 Vict. Ch. 15, S. 3, regarding jurisdiction.**

1. In exercise of the powers conferred by Ss 4, 6 and 8 of Act XI, of 1872, 28th Vic. Chap. 15, S. 3 and of the powers and jurisdiction which he has within the State of Cochin, the Governor General in Council is pleased to make the following orders:—

(*a*) * * *

(*b*) The Resident for the time being in Cochin, being a European British Subject shall be a Justice of the Peace within the said State,

(*c*) The Resident as aforesaid in addition to his powers as a Justice of the Peace shall exercise within the said State the powers of a Sessions Judge under S. 76 Cr. P.C. and may in his discretion direct that trials before him as Sessions Judge shall be conducted without the aid either of a jury or of assessors.

(*d*) The High Court of Judicature at Madras shall exercise original criminal jurisdiction over European British subjects of Her Majesty being Christians resident within the said State.

(*e*) The said High Court shall exercise appellate jurisdiction over all sentences passed on European British subjects as aforesaid by the Resident acting as a Justice of the Peace or as a Court of Session in cases in which an appeal lies to a High Court under the Code of Criminal Procedure.

(*f*) The said High Court shall exercise the powers conferred on a High Court as a Court of revision by the Code of Criminal Procedure in all cases in which European British subjects as aforesaid are accused in the Cochin State before any Justice of the Peace as such or before the Resident as a Court of Session.

(*g*) Commitments of European British subjects as aforesaid when made by the Resident acting as a Justice of the Peace shall be made to the said High Court.

(*h*) Such commitments, when made by any Justice of the Peace in the said State other than the Resident, shall be made either to the Court of the Resident acting as Sessions Judge or to the High Court in accordance with the rules prescribed by S. 75 Cr.P.C. and the said High Court shall be the High Court to which the Resident may transfer cases under the 2nd clause of S. 76 of the said Code.

2. This notification shall come into force on the first day of September 1875. On and from the said date, the notification of this department Nos. 178 J and 179 J dated the 23rd September 1874, in so far as they relate to Cochin, and No. 8 J dated the 9th January 1874 shall be deemed to be rescinded, but not so as to affect any proceedings commenced before the said 1st day of 1875.

3. Nothing herein contained shall be deemed to interfere with an exercise of any powers with which any of the persons named in clause (*a*) of the first paragraph hereof may be invested as Judges of the State of Cochin in pursuance of the arrangements recently assented to by the Governor-General in Council for the administration of criminal justice in the said State in cases where European British subjects are accused. [Govt. of India, Foreign Dept. Notification No. 120 J, 9th August 1875].

(3) **Delivery of prisoner from Native State to British territory.**

The following procedure should be followed to obtain delivery from a Native State of a subject of such State charged with an offence committed in British territory. Such cases are not governed by the Extradition Law (Act XXI of 1879) which relates only to the surrender to Native States of their criminals taking refuge in British Territory. That Act in no way affects the demands of the British Government on Native States whether extraditional treaties exist with them or not. Magistrates should act promptly in the manner prescribed in the extract hereto appended in all cases where the surrender of criminals from Native States may be necessary. (G.O. No. 8, 18th April, 1873).

The offence for which the surrender of the subjects of Native Feudatory States is demanded should be limited to those for which authority may be given to British-officers to surrender the subjects of Native States. In the case of British subjects

a larger catalogue should be allowed; but in every case in which a demand is made, it should be made by British Magistrates, not to the State direct but to the Political officer where there is one; and the demand should invariably be accompanied by a copy of any depositions made or where no evidence has yet been taken, by a statement of the information on which the arrest of the offender is deemed necessary. It should rest with the Political Agent, if necessary, to call on the Magistrate for further evidence; but if the Political Agent possesses the influence and weight he ought to have, he should seldom fail to obtain compliance with any reasonable demand made to the darbar to which he is accredited for the surrender of an absconded criminal. (G.O. Forn. No. 158 J, 8th August 1871).

(4) **Extradition from Native States of absentee members of criminal tribes.**

The Inspector-General publishes for information and guidance the sub-joined letter from the Government of the Punjab in the Home (Police) Department, No. 53 dated 6th February 1907, regarding the extradition from Native States of absentee members of criminal tribes.

No. 53 (Home-Police), Lahore, 6th Feb. 1907.

From,

W. M. Hailey, Esq, Officiating Secretary to Government, Punjab.

To

All Commissioners in the Punjab.

1. I am directed to invite a reference to paragraph 5 (*h*) of the report on the working of the Criminal Tribes Act during the year 1905 a copy of which was forwarded with my letter No. 416 dated 27th Nov. 1906 and to the remarks made therein regarding the extradition of absentee members of criminal tribes.

2. I am to point out that Punjab Government consolidated Circular No. 20 allows British authorities to require extradition from a Native State in all cases in which if the offence had been committed in such state the authorities of that state could have obtained extradition from British India under the provisions of Act XXI of 1879. The Government of India (Foreign Department) Notification No. 3361 dated 23rd Dec. 1898, a copy of which is herewith enclosed, brings offences under the Criminal Tribes Act within the scope of S. 11 of Act XXI of 1879 as regards action by the authorities of Native States; and consequently British authorities can demand extradition of defaulters under the Criminal Tribes Act.

3. The revision of Act XXI of 1879 by Act XV of 1903 does not alter the effect of the notification noted above as the orders contained therein are within the scope of the first paragraph of the first schedule of the revised law.

4. I am to request therefore that where necessary action may be taken, to secure the extradition of absentee members of criminal tribes. [Memo. No. A. 457, 6th April 1907.]

5) **Extradition between the French and British possessions in India.**

Under the stipulations of article IX of the Treaty of 7th March 1815 between Great Britain and France which relates exclusively to the Indian possessions of the two countries it has been customary to surrender persons accused of non-political offences of a grave character upon application supported by a warrant and a summary of the charges, no depositions of witnesses being required; and it has not been considered necessary to observe the more stringent provisions of S. 14 of the Indian Extradition Act XXI of 1879 and Ss. 3 and 10 of Acts XXXIII and XXXIV, Vic. Chap. 52 relating to extradition. In the opinion of His Majesty's Government S. 1 of Act XXI of 1879 affords sufficient legal authority for the carrying out of the treaty in accordance with the existing practice. (G.G.O. (Forn.) No. 1938—I, 29th May, 1881.)

(6) Extradition in case of offence under Criminal Tribes Act.

In exercise of the powers conferred by S. 11, Act XXI of 1879, the Governor General in Council is pleased to declare that a Political Agent may issue a warrant for the arrest and surrender of any person accused of having done in any State against the law of such State an act which would, if done in any part of British India where the Criminal Tribes Act of 1871 is for the time being in force, have constituted an offence against any provisions of the latter Act. (No 3361, 1-A, 23rd Dec. 1898.)

Addenda and Corrigenda to the Punjab Police rules.

Page 41—Add the following as paragraph 148 A.

148 A. Action shall be taken to secure the extradition from Native States of absentee members of registered criminal tribes in accordance with orders referred to in Punjab Government letter No. 53 (Home-Police) dated 6th Feb. 1907 published at page 81 of Police Gazette, Part 1 of 1907. (See also orders in paragraph 1285-A regarding arrests in extradition cases. (No. 763, 6th April 1907.)

(7) Extradition of persons offending against the provisions of the Criminal Tribes Act (Act XXVII of 1871.)

See G.G.O. (Forn.) No. 3361 1—A dated 23rd Dec. 1898. published in Manual of Orders of Govt. U.P. of Agra and Oudh. VIII, p. 16.

(8) Nepal—Requisitions on the Resident of, for extradition.

When an offence seems *prima facie* to come within the definition of murder in S. 300 I.P.C., the demand for extradition should be made under the head of murder although there may be some chance that on trial the offence may be found to fall under some of the exceptions to the section. Where the case is clearly one of culpable homicide not amounting to murder no demand should be made. (G. O. No. 600, 22nd May 1880.)

Magistrates will give information to the local authorities of the darbar of the place of hiding of a British Indian Subject who has absconded into Nepal with an account of the crime with which he is charged. An accurate description of the accused's personal appearance and the names of the Thana or Pargana, the village and the owner of the house where he has taken refuge should if possible be given. As full an account as circumstances will allow of the offence with which he is charged should be drawn up from the police papers or from depositions made before the Magistrate and should be authenticated and forwarded with the information and the request for the detention of the accused. Copies of these documents should at the same time be sent to the Resident for communication to the darbar. Magistrates are reminded of the necessity for furnishing, with requests for surrender, as complete a *prima facie* record of guilt as they can. The efforts of Government and the darbar to keep down crime on the frontier can only be successful when the local authorities give and receive the fullest information possible. (G. O. No. 484, 17th March, 1887.)

(9) Nepal—Demands by the Resident for extradition.

Under the treaties with Nepal the Resident can only demand the extradition of Nepalese subjects for certain offences. (See *infra*). But where the Resident issues a warrant under S. 11 of Act XXI of 1879, it is not open to a Magistrate to refuse to comply with it, on the ground that the offender is a British subject. Such warrants can be issued by the Resident for the arrest of any person not being a European British Subject for any offence specified in the schedule to Act XXI of 1879 and should invariably be obeyed without question. In cases in which the Resident desires the extradition of a person whose nationality is doubtful, Magistrates should arrest the person (under S. 15 of Act XXI of 1879) on a requisition from the Agent, make the necessary inquiry as to nationality and inform him of the result, so that he may issue a warrant for the extradition of the person to Nepal or grant a certificate under S. 188, Cr. P. C. for his trial

in British India according to the result of the inquiry. [G.G.O. Forn. No. 1769 E, 20th Sep. 1895.]

A case recently occurred in which the Nepal darbar applied for the extradition of a Nepalese subject charged with the treaty offence of cattle theft although the accused had already been tried in British territory for dishonest possession of the cattle in question and sentenced to two years' rigorous imprisonment. In such cases extradition cannot be refused and in future persons suspected of having committed such offences should be obtained and if upon reference to the darbar it is ascertained that the accused is a Nepalese subject and that he has apparently committed the offence complained of in Nepalese territory he can, upon suitable requisition made, be surrendered at once to that Government for trial. [1834, E. P. 15th Aug., 1881.]

The darbar have issued orders that in cases where the surrender of a Nepalese subject who is charged with having committed a crime in Nepal and has fled into British territory, is desired, the local officials will give the nearest Magistrate in British Territory such information of the accused's place of refuge as may lead to his arrest and such evidence as will justify his detention for a reasonable period. They will without delay furnish copies of the information and evidence to the Prime Minister for communication to the Resident. The Resident will then either issue a warrant for the accused or if a reference to Government is first needed will take steps to ensure his detention. Magistrates should always notify to the Resident without delay the date on which they surrender a person to the Nepalese Government and the result of the trial in British India of a person accused of an offence in Nepal under a certificate issued by the Resident in accordance with, S. 188 Cr. P. C. [G. O. No. 484, 17th March 1887.]

(10) **Nepal—Extradition from and to.**

The following officers should invariably correspond direct with the Resident on the subject of extradition.

Deputy Commissioner of	Almora.
Do.	Nainital
Do.	Kheri
Do.	Bahraich
Do.	Gonda
Do.	Lucknow
Do.	Bara Banki
Do.	Fyzabad
Magistrate of	Pilibhit
Do.	Shajahanpur
Do.	Basti
Do.	Gorakhpur
Do.	Benares
Do.	Bareilly.

[G. O. No. 2934—VI—674, C. 12th Nov. 1895]

Murder.
Attempt to murder.
Rape.
Maiming.
Thaggi.
Cattle stealing.
Embezzlement by Public officer.
Dacoity.
Highway robbery.
Poisoning.
Burglary.
Arson.

The list on the margin contains only offences for which extradition from Nepal can be demanded and Magistrates can only demand the extradition of a British subject. The question of nationality ordinarily depends on the place of birth. Warrants are not required with demands for extradition and the Resident cannot comply with them as such.

Serious theft *i. e.* cases of theft in which the amount stolen may be considerable or personal violence may have been used. Escaping from custody whilst undergoing punishment after conviction of any of the above offences. [G.G.O. Forn. No. 1592, 8th Oct. 1879 and No. 1769 *F*, 20th Sep. 1895].

(11) Native State, committal by Justice of the Peace in, to High Court.

In exercise of the powers conferred by S. 6 of the Foreign Jurisdiction and Extradition Act XXI of 1879, the Governor General in Council is pleased to direct that a Justice of the Peace for the time being in any Native States, territory, or chiefship specified in Foreign Department Notification, No. 178 J. dated the 23rd September 1874 shall commit for trial to the High Court which under that notification has original and appellate criminal jurisdiction in pursuance of the Statute 28 & 29 Vic. Chap. 15, S. 3. over European British Subjects (being Christians) resident in such State, territory or chiefship. [Government of India Foreign Department Notification No. 2616—I dated 6th August 1890. F. D. Notification No. 179 J dated 23rd September 1874, cancelled.]

(12) Pudukkottai, Banganapalle, Sandur Native States, appointment of Justice of Peace in.

In exercise of the powers conferred by S. 6 of Act XXI of 1879, the Governor General in Council is pleased to appoint the persons for the time being holding the offices designated in the first column of the following schedule, provided that such persons be European British subjects, to be Justices of the Peace within the Native States mentioned opposite their designations in the second column of that schedule, respectively.

Offices	States.
The Political Agent, Pudukkottai	Pudukkottai States.
The Political Agent, Banganapalle	Banganapalle
Do. , Sandur	Sandur.

[Govt. of India, Forn. Dept. Notn. No. 1829—I, 29th May 1894].

(13) Ramandrug (in Sandur State), Justice of Peace for.

In exercise of the power conferred by S. 6 of Act XXI of 1879 the Governor General in Council is pleased to appoint the Collector and Head Assistant Collector of Bellary for the time being, provided they are European British subjects to be Justices of the Peace for Ramandurg in the State of Sandur. [Govt. of India Foreign Dept. Notification No. 1019—I.]

(14) Ramandrug State, Orders regarding, exercise of criminal jurisdiction by British Government.

Whereas the Raja of Sandur has ceded to the British Government certain criminal jurisdiction over the land within his State known as Ramandrug; in exercise of such jurisdiction and of the powers conferred by by Ss. 4 and 5 of Act XXI of 1879 and of all other powers enabling him in this behalf, the Governor General in Council is pleased to issue the following orders:—

1. The Sub-Magistrate of Ramandrug for the time being shall exercise within the said land, in respect of all persons not being subjects of the Raja residing therein, all the powers of a Magistrate with which he may for the time being be invested by the Governor of Fort St. George in Council under the Code of Criminal Procedure, 1882.

2. All Criminal Courts for the time being having jurisdiction within the Bellary District, shall have within the said land in respect of the persons described in the last foregoing clause, the jurisdiction which they respectively have within that district; provided that the powers of a High Court shall be exercised by the Governor of Fort St. George in Council and not by the High Court of Judicature at Madras.

3. The law relating to offences and criminal procedure for the time being in force in British India shall extend to the said land so far as the persons described in clause 1 of this notification are concerned.

4. Nothing contained in clauses 1, 2 and 3 of this notification shall apply to accused persons who are European British Subjects or persons jointly charged with European British Subjects. [Government of Indian Forn. Dept. Notn. No 1018-I, 5th March 1891.]

(15) **Rampur and Rohilkhand.**

Power of Justice of the Peace conferred on the Commissioner of Rohilkhand and Agent of the Lieutenant-Governor of the North West Provinces for Rampur. See G. (No. 1883) dated 7th July 1883, Local Rules and Orders, N. W. P. and Oudh, 1893, p. 47.

(16) **Rules under S. 18.**

[**N.B.** See Manual of Orders of Govt. U.P. of Agra and Oudh, part VI, pp 29, 30.]

1. The Political Agent shall not issue a warrant under S. 11 of the Act in any case which is provided for by treaty, if the Native State expressly desires to abide by the procedure of the treaty, nor in any case in which application for surrender is made under S. 14 to the Governor General in Council or any local Government.

2. The Political Agent shall not issue a warrant under S. 11 except on a request preferred to him in writing by, or by the authority of, the person for the time being administering executive Government of the Native State at which he is the British Representative and on the understanding that the provisions of Act XXI of 1879 and of these rules are to apply to the case.

3. If the accused be a British subject, the Political Agent shall before issuing such a warrant, consider whether he ought not to certify the case as one for trial in British India; and he shall instead of issuing a warrant, so certify the case if he is satisfied that the interests of justice and the convenience of witnesses can be better served by the trial being held in British India than in the Native State.

4. The Political Agent shall in all cases, before issuing a warrant under S. 11 satisfy himself by a preliminary inquiry that there is a *prima facie* case against the accused and that the charge is not prompted by political motives.

5. If the person surrendered under the warrant of the Political Agent issued under S. 11, be not a British subject or if such person being a British subject, the Courts of the State, either by custom or by the express recognition of the Governor General in Council try Native British Subjects surrendered to them by extradition, and the Political Agent after hearing the statement, if any, of the accused and making such further enquiry as he may deem necessary, is still satisfied that there a *prima facie* case against the accused and that the charge is not prompted by political motives the Political Agent shall make over the accused to be tried by the ordinary Courts of the State in which the offence was committed, provided that the Courts of the State have, by custom or recognition as aforesaid, power to inflict the punishment which may be inflicted under the Indian Penal Code for the offence with which the accused person is charged.

6. If the accused be a British subject, but the Courts of the State do not, by custom or recognition as aforesaid, try Native British subjects, the Political Agent shall dispose of the case himself.

7. If the punishment which may be awarded under the Indian Penal Code, for any offence for which an accused person has been surrendered as above be more than the Courts of the State, by custom or recognition as aforesaid, inflict, the Political Agent may try the case himself if he thinks it advisable to do so.

8. Notwithstanding anything in the three preceding rules the Political Agent shall try any such case himself or make it over for trial by the ordinary Courts of the State, if he be generally or especially instructed by the Governor General in Council so to do.

9. In cases made over for trial by the Courts of a Native State under rules 5 and 7 the Political Agent shall satisfy himself that the accused received a fair trial and that the punishment inflicted in the case of his conviction is not excessive or barbarous, and if he is not so satisfied, he shall demand the restoration of the prisoner to his custody pending the orders of Government.

10. A return of all persons made over for trial by the Courts of Native State under rules 5 and 7 shall be submitted half yearly for the periods ending on the 30th June and the 31st December by the Political Agent to the Local Government in the following form.

Return of persons made over during the half year ending on the—for trial by the Courts of the Native State of—under the Extradition Act XXI of 1879.

Number.	Name of person.	Nationality.	Offence with which charged.	Where arrested.	Date of surrender.	Native State to which surrendered for trial.	Reasons for surrender.	Nature of sentence passed with date of sentence.	Remarks.	Disposal of cases shown as pending on the previous half year's return.

11. Persons arrested in British territory on a warrant issued by a Political Agent under S. 11 and persons arrested under a warrant issued under S. 14 shall be treated as far as possible in the same way as persons under trial for a similar offence would be treated under the Code of Criminal Procedure or under the procedure in force in the Presidency towns, if the arrest takes place within any Presidency town.

12. Persons sentenced to imprisonment by the Political Agent shall, if British subjects, be conveyed to the most convenient jail in British territory, there to be dealt with as though the conviction had taken place in a court of British India; provided always that no appeal shall thereby be given other than is allowed by any rule for regulating appeals from the decisions of the Political Agent.

13. Nothing in rules 5 to 10 inclusive which refer to cases under S. 13 of the said Act shall be deemed to apply to Political Agents immediately under the authority of the Governor in Council of the Presidency of Fort St. George or the Governor in Council of the Presidency of Bombay.

The above rules under Act XXI of 1879 (The Foreign Jurisdiction and Extradition Act) (Vide 16 and 18) shall not apply to Native territory under the direct administration of the British Government in which the Code of Criminal Procedure is in force.

(17) **Travancore State.**

Orders framed under Act II of 1872 and 28 Vic. Chap. 15, S. 3 by the Governor General in Council regarding jurisdiction.

1. In exercise of the powers conferred by Ss. 4, 6 and 8 of Act XXI of 1872 and by the 28th Vic. Chap. 15, S. 3 and of the power and jurisdiction which he has within the State of Travancore, the Governor General in Council is pleased to make the following orders.

(*a*) * * * *

(*b*) The Resident for the time being in Travancore being a European British subject, shall be a Justice of the Peace within the said State.

(*c*) The Resident as aforesaid, in addition to his powers as a Justice of the Peace, shall exercise within the said State the Powers of a Sessions Judge under S. 76 Cr. P.C. and may in his discretion direct that trials before him as Sessions Judge shall be conducted without the aid either of a jury or of assessors.

(*d*) The High Court of Judicature at Madras shall exercise original criminal jurisdiction over European British subjects of Her Majesty being Christians resident within the said State.

(*e*) The said High Court shall exercise appellate jurisdiction over all sentences passed on European British subjects as aforesaid by the Resident acting as a Justice of the Peace or as a Court of Session in cases in which an appeal lies to a High Court under the Code of Criminal Procedure.

(*f*) The said High Court shall exercise the powers conferred on a High Court as a Court of revision by the Cr. P. C. in all cases in which European British subjects as aforesaid are accused in the Travancore State before any Justice of the Peace as such or before the Resident as a Court of Session.

(*g*) Commitments of European British subjects as aforesaid when made by the Resident acting as a Justice of the Peace shall be made to the said High Court.

(*h*) Such commitments when made by any Justice of the Peace in the said State other than the Resident shall be made either to the Court of the Resident acting as Sessions Judge or to the said High Court in accordance with the rules prescribed by S. 75 Cr. P.C. and the said High Court shall be the High Court to which the Resident may transfer cases under the 2nd clause of S. 76 of the said Code.

2. This notification shall come into force on the first day of September 1875. On and from the said date the notification of this department Nos. 178 and 179 J dated 23rd September 1874 in so far as they relate to Travancore and No 8 J dated the 9th January 1874 shall deem to be rescinded but not so as to affect any proceedings commenced before the said 1st day of September 1875.

3. Nothing herein contained shall be deemed to interfere with the exercise of any powers with which any of the persons named in clause (*a*) of the first paragraph hereof may be invested as Judges of the State of Travancore in pursuance of the arrangements recently assented to by the Governor General in Council for the administration of criminal justice in the said State in cases where European British subjects are accused.

[Govt. of India, Forn. Dept. Notn. No. 119 J, 9th Aug. 1875.]

EXTRADITION ACT, 1903.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this volume and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S in Brevier Roman denotes the section.

A

Abetment, in foreign territory of offence in British India, *V*, **26.**

Abetting, offence—Liability of accused to be arrested and surrendered, S. 13, **18.**

Absconding, Proclamation and attachment in case of persons, S. 7 (3), **13.**

Accused, Presence of, at time of enquiry before extradition, *X*, **19.**

Act I of 1878 (Opium), Illicit possession of opium outside British India, *N*, **22.**

Act, Extension of the,—S. 1, **7.**

Object of the, *A*, **7.**

Admiralty, Jurisdiction, *U—V*, **23, 24.**

Jurisdiction, *B*, **32.**

Alter, Power to, charge of extradition offence. *M*, **14.**

Amendment,—of charge, when Political Agent's certificate specifies offence, *I*, **21.**

Appeal, to Privy Council—of political cases, *J*, **13.**

Arrest, See ABETTING, ATTEMPTING.

See DETENTION.

See WARRANT.

Summons or warrant for, of fugitive criminal, S. 3 (2), **9.**

Person arrested under S. 4 (1) not to be detained unless order received, S. 4 (3), **12.**

Illegal,—Consent of state of which accused is a subject, *S*, **15.**

Re-arrest in case of default of appearance, S. 8 (3), **15.**

Limit of time of detention of person arrested under S. 10 (1)—S. 10 (3), **17.**

Bail to person arrested or detained under S. 10 (1)—S. 10 (4), **17.**

In Native State for offence committed in British India, *P*, **29.**

On foreign railway for offence in British India, *T*, **30.**

of fugitive offender, *Y*, **32.**

Attachment, See PROCLAMATION.

Attempting, offence—Liability of accused to be arrested and surrendered, S. 13, **18.**

Authentication, of judicial document stating fact of conviction before any Court outside British India, S. 17(2), **18, 19.**

of copies of warrants etc., S. 17(2) **18, 19.**

of depositions received by Courts of Justice outside British India, S. 17 (2), **18, 19.**

of certificates of conviction before any Court outside British India, S. 17 (2), **18, 19.**

of warrants issued by Courts of Justice outside British India, S. 17 (2), **18, 19.**

of statements on oath taken by Courts of Justice outside British India, S. 17 (2), **18, 19.**

Authority, See POLITICAL AGENT,

B

Bail, When Magistrate may release fugitive criminal on, S. 3 (5). **9.**

Crim. Pro Code provisions, applicability of, S. 4 (1), **12.**

Power to order, in the absence of endorsement on warrant by Political Agent. *V*, **16.**

to person arrested or detained under S. 10 (1), S. 10 (4), **17.**

Bangalore, See JUSTICE OF PEACE.

Banganapalle, Appointment of Justice of Peace for, (12), **40.**

Bond, Magistrate taking security under S. 8 (1), to retain, S. 8 (2), **15.**

Re-arrest in case of default of appearance, S. 8 (3), **15.**

Forfeiture of S. 8 (4), **16.**

Deposit in lieu of, S. 8 (4), **16.**

British Baluchistan, Extension of Act to, S. 1, **7.**

British Consul, Evidence taken by, at Zanzibar—Validity, *W*, **19.**

British Courts, Jurisdiction of, over offence committed by foreigner, *H*, **11.**

British India, See AUTHENTICATION.

See COMMISSIONS.

See NATIVE INDIAN.

Conviction in, for offence committed without, *C*, **8.**

Property stolen outside, received in, *U*. **15.**

Surrender of person undergoing sentence in, S. 11 (1), **17.**

Convicted persons escaping in, before expiry of sentence, S. 12, **18,**

British subjects committing offences outside, *Y—Q*, **20, 23.**

Sanction of Government to try offence committed outside British India, *H*, **21.**

British soldier, Jurisdiction to try, in Native State, *Z*, **20.**

British subjects, Trial of, committing offence in Native States, *B*, **7.**

Jurisdiction to try offence committed in foreign territory by, *C*, **20.**

committing offences outside British India, *Y—Q*, **20, 23.**

meaning of, *E*. **24.**

Burmese Native subject, Jurisdiction to try, *U*, **26.**

C

Certificate, Authentication of, of conviction before Court outside British India, S. 17 (2), **18, 19.**

Offence committed outside British India—Trial without, required under S. 188, Cr.P.C., *D*, **20.**

Trial without Political Agent's, *E*, **21.**

Effect of want of, of Political Agent, *E*, **21.**

Amendment of charge when Political Agent's, specifies offence, *I*, **21.**

See OFFICIAL CERTIFICATES.

Charge, Power to alter, of extradition offence, *M*, **14.**

for one offence—Extradition for another offence, *N*, **14.**

Demanding extradition for one offence while intending to, for another, *O*, **14.**

Amendment of, when Political Agent's certificate specifies offence, *I*, **21**

Punishment to follow law under which, is preferred, *Z*, **27.**

Chief Court, Revision by, of Punjab, *K*, **13**.
Power to interfere in extradition orders, *L*, **13**.
Cochin State, See RULES (2), **35**.
Commissions, Execution of, issued by Criminal Courts outside British India, S. 21, **33**.
Commit, When Magistrate may, fugitive criminal to prison, S. 3 (4), **9**.
Commitment, without Political Agent's certificate, *F*, **21**.
of European British subject by Justice of Peace, *K—L*, **28—29**.
Common Law Courts, Jurisdiction of, *G*, **24**.
Condition, for re-surrender—Sentence of death subsequently passed, S. 11 (1), **17**.
Consent, of state of which accused is a subject to illegal arrest, *S*, **15**.
Construction, of Native Indian subject, *J*, **21**.
Contract, Breach of, in foreign territory—Jurisdiction, *S*, **26**.
Control, of British Government over Native States, *V*, **30**, **31**.
Conviction, in British India for offence committed without, *C*, **8**.
Convicts, Application of Chap. III to convicted persons escaped in British India, S. 12. **18**.
Copies, of exhibits, etc.—See EXHIBITS.
Authentication of, of warrants, etc., issued in outside British India, S. 17 (2), **18**, **19**.
Criminal, See FUGITIVE.
Crim. Pro. Code, Proclamation and attachment in case of persons absconding, S. 7 (3), **13**.
Deposit in lieu of bond, and forfeiture of bonds, S. 8 (4), **16**.
S. 54, cl. (7)—Detention of persons arrested under. S. 23, **34**.
S. 188 extends to all British subjects, *B*, **7**.
S. 188—Magistrate trying accused without certificate or sanction—Legality, *D*, **20**.
See BAIL.
Criminal proceeding, pending in Foreign State—Keeping accused in custody, *G*, **11**.
Criminal tribes, Extradition from Native States of absentee members of, (4), **37**.
Criminal Tribes Act, Extradition in case of offence under, (6), **38**.
Custody, Lawfulness of, under warrant for surrender, S. 3 (9), **10**.
Criminal proceeding pending in Foreign State—Keeping accused in, *G*, **11**.
Person arrested under S. 4 (1) not to be detained unless order received, S. 4 (3), **12**.
Power of Government to discharge any person in, S. 5 (2), **12**.
Lawfulness of, under warrant issued under Ch. III, S. 14, **18**.

D

Death, Execution of sentence of, on accused surrendered on condition of re-surrender, S. 11 (1), **17**.
Delivery, of prisoner from Native State to British territory (3), **36—37**.
Deposit, in lieu of bond, S. 8 (4), **16**.
Depositions, Receipt in evidence of, in proceedings under Ch. III, S. 17 (1), **18**.
Authentication of, received by Court outside British India, S. 17 (2), **18**, **19**.
taken by British Consul at Zanzibar, *W*, **19**.

Detention, Limit of time of detention of person arrested under S. 10 (1)—S. 10 (3), **17.**
of persons arrested under, S. 54, cl. (7) Cr.P.C. S. 23, **34.**
Discharge, of fugitive criminals committed to prison, S. 3 (10), **10.**
Power of Government to, any person in custody, S. 5 (2), **12.**
of person taken in custody under Ch. III, S. 15, **18.**
Discretion, See POLITICAL AGENT.
District Magistrate, Power to make enquiry before sending case to, *Q*, **22**, **23.**

E

Endorsement, on warrant by Political Agent, S. 8 (1), **15.**
No, on warrant by Political Agent—Power to order bail, *V*, **16.**
English ship, See SHIP.
Enquiry, before issue of warrant by Political Agent, *P*, **14.**
Presence of accused at the time of, before extradition, *X*, **19.**
Power to make, before sending case to District Magistrate, *Q*, **22**, **23.**
Escape, Application of Ch. III to convicted persons escaped in British India, S. 12 **18.**
from custody—Liability to be retaken, S. 14, **18.**
European British subject, Definition of, S. 2, **8.**
Committal of, by Justice of Peace, *K*—*L*, **28**, **29.**
High Court's appellate power over persons other than, *X*, **31**,
District Magistrate of Mysore trying, *W*. **31.**
Evidence, Magistrate to take, whether the crime is offence of political character or is not an extradition crime, S. 3 (3), **9.**
Receipt in, of exhibits, depositions and other documents, S. 17 (1), **18.**
taken by British Consul at Zanzibar—Validity, *W*, **19.**
Execution, of warrants issued by Political Agents, S. 7 (2), **13.**
of sentence of death on person surrendered on condition of re-surrender, S. 11 (1), **17.**
Exhibits, Receipt in evidence of, in proceedings under Ch. III, S. 17 (1), **18.**
Extradition, Magistrate to take evidence whether offence is not, crime, S. 3 (3), **9.**
of person from a State whose subject he is not, *I*, **11.**
Power of Punjab Chief Court to interfere in, orders, *L*, **13.**
for one offence—Charge for another offence, *N*, **14.**
Demanding, for one offence while intending to charge for another, *O*, **14.**
Presence of accused at time of enquiry before, *X*, **19.**
Procedure provided by treaty for, of offenders to be followed, S. 18, **20.**
Treaty for, of offenders, S. 18, **20.**
to be regulated according to terms of treaty, *A*, **27.**
against terms of treaty, *B*, **27.**
in non-extraditable offence, *R*, **30.**
from Native States of absentee members of criminal tribes, (4), **37.**
Between the French and British possessions in India, (5), **37.**
in case of offence under Criminal Tribes Act (6), **38**; Requisition on the Resident of Nepal for, (8), **38.**

Extradition Act, 1870, S. 3—'Police Magistrate' and 'Secretary of State'—References to, S. 6, **12.**

Extradition offence, Definition of, S. 2, **8.**

Power to alter charge of, *M*, **14.**

See OFFENCE.

Extradition offences, What are, Sch. I, **34, 35.**

F

Forfeiture, of bond under S. 8 (1)—S. 8 (4), **16.**

Foreign, Offence committed in, ship in foreign jurisdiction, *W*, **27.**

Foreigner, Piracy by,—Jurisdiction, *L—M*, **25.**

Jurisdiction of British Court to try, *N—O*, **25.**

Surrender of, by British Government, *X*, **26.**

Foreigners, See JURISDICTION.

Foreign Railway, See RAILWAY.

Foreign State, Definition of, S. 2, **8.**

Jurisdiction of Magistrate to inquire into case fugitive criminal of, S. 3 (1), **8, 9.**

Inquiry by Magistrate into case of fugitive criminal of, S. 3 (3), **9.**

Jurisdiction to try offence committed in, *C*, **20.**

Surrender of fugitive criminals in case of, Ch. II, **8, 12.**

Surrender of fugitive criminals in case of States other than, Ch. III, **12, 31.**

See CUSTODY.

Foreign subject, Application to King-in-Council by, *J*, **13.**

Jurisdiction of British Court to try offence by, *R*, **26.**

Foreign territory, Abetment in, of offence in British India, *V*, **28.**

Breach of contract in,—Jurisdiction, *S*, **26.**

Offence committed in,—Jurisdiction, *H—I*, **28.**

Forms, Rules include prescribed, S. 2, **8.**

Fugitive, Jurisdiction of Magistrate to inquire into case of foreign criminal, S. 3 (1), **8, 9.**

Summons or warrant for arrest of, criminal S. 3 (2), **9.**

Inquiry by Magistrate into case of, criminal of foreign state, S. 3 (3), **9.**

When Magistrate may commit, criminal to prison, S. 3 (4), **9.**

When Magistrate may release, criminal on bail, S. 3 (5), **9.**

Magistrate to submit written statement of, criminal to Government, S. 3 (6), **9.**

Reference to High Court about surrender of, criminal. S. 3 (7), **9.**

Warrant for surrender of, criminal, S. 3 (8), **10.**

Discharge of, criminals, S. 3 (10), **10.**

Power of Government to refuse to issue order under S. 3—S. 5 (1), **12.**

Surrender of, criminals in case of Foreign State, Ch. II, **8, 12.**

Surrender of, criminals in case of States other than Foreign States, Ch. III, **12, 31.**

Fugitive offender, Rendition of, in H. M's Dominions, S. 19, **31, 32.**

Warrant of arrest of, *Y*, **32.**

Fugitive Offenders Act, 1881, offences to which the Act applies, S. 19 (*d*), **31.**

Application of, S. 19, **31, 32.**

G

Government, Power of, to refuse to issue order under S. 3—S. 5 (1), **12**.
Power of, to discharge any person in custody, S. 5 (2), **12**.
Report by Magistrate to, of issue of warrant under S. 10 (1)—S. 10 (2), **17**
Power of, to discharge person in custody taken under Ch. III, S. 15, **18**.
Power of to stay proceedings taken under Ch. III, S. 15, **18**.
Sanction of, to try offence committed outside British India, *H*, **21**.

H

High Court, Definition of, S. 2, **8**.
Reference to, about surrender of fugitive criminal, S. 3 (7), **9**.
Power of, to discharge fugitive criminal, S. 3 (10), **10**.
Power to interfere Magistrate's action when illegal, *D*, **10**.
of Bombay—Power to try off. ice committed at Zanzibar, *B*, **20**.
Commitment to, of Madras of Europeon British subject, *K—L*, **28**, **29**.
Justice of Peace for Bangalore subordinate to, of Madras, *M*, **29**.
Power of, to transfer case from Dist. Magistrate, *N*, **29**.
Power of Travancore, in Extradition cases, *Q*, **30**.
appellate power of. over persons other than European British subject, *X*, **31**.
High seas, Offence committed on—Procedure and punishment, *R*, **23**.
Offence committed on, *R—M*, **23**, **25**.
Offence committed on, jurisdiction of British Courts, *S*, **23**.
Children born in English ship on, *T*, **23**.
Offence committed on, procedure for trial, *A*, **24**.
Jurisdiction of Presidency Magistrate to try offence committed on, *D*, **24**.
Offence committed on, applicability of Penal Code, *Z*, **24**.
Jurisdiction over merchantship on, *I*, **25**.
Requisition for surrender in case of offence committed on, S. 20, **32**.
His Majesty's subject, meaning of, *F*, **24**.

I

Illegal arrest, Trial after, *T*, **15**.
See ARREST.
Inquiry, by Magistrate into case of fugitive criminal of foreign State, S 3, (3), **9**.
International law, General rule of, *Q*, **26**.

J

Judicial documents, Receipt in evidence of, in proceedings under Ch. III, S. 17 (1), **18**.
Authentication of, stating fact of conviction before Court outside British India, S. 17 (2), **18**, **19**.
Jurisdiction, Conviction in British India for offence committed without, *C*, **8**.
of Magistrate to inquire into the case of Foreign fugitive criminal, S. 3 (1), **8**, **9**.
of British Courts over offence committed by foreigner, *H*, **11**.
Magistrate when issuing warrant need not be within his local limits, *R*, **15**.
Court of British India having concurrent, over offence—Applicability of, Ch. III, S. 16, **18**.

Jurisdiction—(Concluded).

of Magistrate in whose, foreigners were found, *A*, **20.**

to try offence committed in foreign territory by British subjects, *C*, **20.**

to try offence committed outside British India—Trial without certificate or sanction required by S. 188, Cr. P. C., *D*, **20.**

to try British soldier in Native State, *Z*, **20.**

to try offence committed in Native State, *P*, **22.**

to try offence in territory subsequently annexed by British Government, *O*, **22.**

Admiralty, *U—V*, **23, 24.**

of Bombay High Court, *C*, **24.**

Admiralty, of Bombay High Court, *C*, **24.**

of Presidency Magistrate to try offence committed on high seas, *D*, **24.**

of Common Law Courts, *G*, **24.**

Over merchantship on high seas, *I*, **25.**

Piracy by foreigner, *L—M*, **25.**

of British Court to try foreigner, *N—O*, **25.**

Breach of contract in foreign territory, *S*, **26.**

Offence complete outside British India, *T*, **26.**

to try Burmese Native subject, *U*, **26.**

offence committed in foreign vessel in foreign, *W*, **27.**

between different Christian States, *C—F*, **27, 28.**

of Governor-General of India outside British India, *C*, **28.**

See EXTRADITION.

Justice of Peace, Committal of European British subject by, *K—L*, **28 29.**

for Mysore—power to try offence not under Penal Code, *O*, **29.**

for Bangalore subordinate to High Court of Madras, *M*, **29.**

for Ramndrug, (13), **40.**

in Rampur and Rohilkhand, (15), **41.**

L

Legislate, Power of Mysore State to, regarding European British subject, *U*, **30.**

Local limits, See JURISDICTION.

M

Magistrate, When can a, be ordered to inquire into offence committed in Foreign State, S. 3 (1), **8, 9.**

Nature of inquiry by, into case of fugitive criminal of Foreign State, S. 3 (3), **9.**

to take evidence whether the crime is offence of political character or is not an extradition crime, S. 3 (3). **9.**

when may commit fugitive criminal to prison, S. 3 (4), **9.**

When, may release fugitive criminal on bail, S. 3 (5), **9.**

to submit written statement of fugitive criminal to Government, S. 3 (6), **9.**

to report result of his inquiry to Government of India or Local Government, S. 3 (6), **9.**

High Court's power to interfere with order of, *D*, **10.**

Power to, to issue warrant of arrest S. 4 (1), **11.**

When issuing warrant not within his local limits, *R*, **15.**

taking security to certify it to Political Agent, S. 8 (2), **15.**

Magistrate—(Concluded).

Power to question authority or discretion of Political Agent, *Q*, **14**, **15**.

Power to, to issue warrants of arrest, S. 10 (1), **16**.

should forthwith report issue of warrant under S. 10 (1)—S. 10 (2), **17**.

Jurisdiction of, in whose jurisdiction foreigners were found, *A*, **20**.

trying accused without certificate or sanction under S. 188, Cr.P.C., *D*, **20**.

Merchantship, Jurisdiction over, on high seas, *I*, **25**.

Mysore, Power of Chief Commissioner of, to transfer criminal case, *J*, **28**.

Justice of Peace in, to commit European British subject to High Court of Madras, *K*, **28**.

Power to legislate in criminal matters regarding European British subject, *U*, **30**.

District Magistrate of, trying European subject, *W*, **31**.

N

Native Indian, Trial of, subjects for offence outside British India, *Y*, **20**.

subject—Proof of being, necessary before trial, *K*, **21**.

subject of Her Majesty does not include servants, *J*, **21**.

subject—Occasional residence of accused in British India, *L*, **22**.

subject—meaning of, *M*, **22**.

Native States, Trial of British subjects committing offence in, *B*, **7**.

Jurisdiction to try British soldier for offence in, *Z*, **20**.

Jurisdiction to try offence committed in, *P*, **22**.

Arrest in, for offence committed in British India, *P*, **29**.

Control of British Government over, *V*, **30**, **31**.

Delivery of prisoner from, to British territory (3), **36**, **37**.

Nepal, Requisition on the Resident of, for extradition (8), **38**.

Demands by Resident of, for extradition (9), **38**.

Extradition from and to, (10), **39**.

Nizam's territory, Power to execute criminal process in, *S*, **30**.

O

Offence, committed in Native State—Trial, *B*, **7**.

Conviction in British India for, committed without, *C*, **8**.

Definition of S. 2, **8**.

of political character, what is, *F*, **11**.

Jurisdiction of British Courts over, committed by foreigner, *H*, **11**.

Committed before commencement of Act—Applicability of Ch. III, S. 16, **18**,

Committed in foreign territory by British subjects—Jurisdiction, *C*, **20**.

British subjects committing, outside British India, *Y—Q*, **20**, **23**.

committed on High seas, *R—M*, **23**, **25**.

by foreign subject—jurisdiction, *R*, **26**.

Complete outside British India—Jurisdiction, *T*, **26**.

Act lawful in foreign country but an, in England, *Y*, **27**.

Extradition in non-extraditional, *R*, **30**.

See ARREST.

See ZANZIBAR.

O

Official certificates, Receipt in evidence of, in proceedings under Ch. III, S. 17 (1), **18.**
Opium, Illicit possession of, outside British India, *N*, **22.**

P

Pergana, Extension of Act to, S. 1, **7.**
Penal Code, Justice of Peace for Mysore trying case not an offence under I.P.C., *O*, **29.**
Piracy, jure genitum, what is, *J*, *K*, **25.**
by foreigner—jurisdiction, *L*, *M*, **25.**
Seizure of a ship when amounts, *A*, **32.**
Definition of, *Z*, **32.**
Police Magistrate, See EXTRADITION ACT, 1870, S. 3.
Political, Magistrate to take evidence whether offence is, or not S. 3 (3), **9.**
Crimes forming part of, disturbances—Surrender of criminal, *E*, **10.**
Offence of, character—What is, *F*, **11.**
Power of Government to refuse to issue order under S. 3 when crime is of, character, S. 5 (1), **12.**
case—Appeal to Privy Council, *J*, **13.**
Political Agents, Issue of warrant by, S. 7 (1), **12, 13.**
Execution of warrants issued by, S. 7 (2), **13.**
Warrant by,—Enquiry before issuing it, *P*, **14.**
Endorsemt on warrant by, S. 8 (1), **15.**
Power of Magistrate to question authority or discretion of, *Q*. **14, 15.**
Magistrate taking security under S. 8 (1) to certify it to. S. 8 (2), **15.**
Requisition for surrender when shall be made through, S. 9, **16.**
Report by Magistrate to, of issue of warrant under S. 10 (1)—S. 10 (2), **17.**
Effect of want of certificate of, *E*, **21.**
Trial without certificates of, *E*, **21.**
Amendment of charge when certificate of, specifies offence, *I*, **21.**
See ENDORSEMENT.
Postponement, of sentence of death on person surrendered on condition of re-surrender, S. 11 (1), **17.**
Presidency Magistrate, Jurisdiction of, to try offence committed on high seas, *D*, **24.**
Prevention, of sentence of death on person surrendered on condition of re-surrender, S. 11 (1), **17.**
Prison, When Magistrate may commit fugitive criminal to, S. 3 (4), **9.**
Discharge of fugitive criminals committed to, S. 3 (10), **10.**
Privy Council, Appeal to, of political cases, *J*, **13.**
Procedure, provided by treaty for extradition of offenders to be followed, S. 18, **20.**
Offence committed on high seas, *R*, **23.**
Process, Power to execute criminal, in Nizam's territory, *S*, **30.**
Proclamation, and attachment in case of persons absconding, S. 7 (3), **13.**
Pudukottai, Appointment of Justice of Peace for, (12), **40.**
Punishment, Offence committed on high seas, *R*, **23.**
to follow law under which charge is preferred, *Z*, **27.**

R

Railway, Arrested on foreign, for offence in British India, *T*, **30**.

Ramandrug, See rules (14), **40**, **41**.

Rampur, Justice of Peace, (15), **41**.

Re-arrest, See ARREST.

Reference, to High Court about surrender of fugitive criminal, S. 3 (7), **9**.

Release, on giving security, S. 8 (1), **15**.

Rendition, of fugitive offenders, Ch. IV, **31**, **32**.

Report, Magistrate shall, result of his inquiry into case of fugitive criminal, S. 3 (6), **9**.

by Magistrate of issue of warrant under S. 10 (1)—S. 10 (2), **17**.

Requisition, for surrender of fugitive criminal by Foreign State, S. 3 (1), **8**, **9**.

for surrender when shall be made through Polititical Agent, S. 9, **16**.

for surrender by States not being Foreign States, S. 9, **16**.

for surrender in case of offence committed at sea S. 20, **32**.

Residence, occasional, of accused in British India whether constitutes him a Native Indian subject, *L*, **22**.

Resurrender, Condition for—Sentence of death subsequently passed, S. 11 (1), **17**.

to Government on termination of trial for offence for which surrender is asked, S. 11 (1), **17**.

Suspension of sentence on surrender. S. 11 (2), **17**.

Re-taking, under warrant for surrender, S. 3 (9), **10**.

Lawfulness of, under warrant issued under Ch. III, S. 14, **18**.

Revision, by Chief Court of Punjab, *K*, **13**.

Rohilkhand, Justice of Peace (15), **41**.

Rules, Definition of, S. 2, **8**.

Power of Government to make, S. 22, **33**.

Taking bail from persons arrested under, S. 14 (1), **35**.

For Cochin State regarding jurisdiction (2), **35**, **36**.

Delivery of prisoner from Native State to British territories (3), **36**, **37**.

Extradition from Native States of absentee member of Criminal tribes, (4) **37**.

Extradition between the French and British possessions in India, (5), **37**, **38**.

Extradition of persons offending against Criminal Tribes Act, (6) (7), **38**.

Requisitions on the Resident of Nepal for extradition, (8), **38**.

Demands by Resident of Nepal for extradition, (9), **38**.

Extradition to and from Nepal, (10), **39**.

Committal by Justice of Peace in Native State to High Court, (11) **40**.

Appointment—of Justice of Peace in Native States, (12), **40**.

Regarding exercise of criminal jurisdiction in Ramandrug, (14), **40**, **41**.

Under S. 18, (16), **41**, **42**.

Regarding jurisdiction for Travancore State, (17) **43**.

S

Sanction, Offence committed, outside British India—Trial without, required under S. 188, Cr.P.C., *D*, **20**.

Santhal Parganas, Extension of Act to, S. 1, **7.**
Saudar, Appointment of Justice of Peace for, (12), **40.**
Sea, Offence committed on, within 3 miles of shore, S. 23, *B*, **24.**
Intervening space of, when part of adjoining country, *H*, **24.**
See HIGH SEAS.
Secretary of State, See EXTRADITION ACT 1870, S. 3.
Security, Release on giving, S 8 (1), **15.**
Procedure when, is taken under S. 8 (1)—S. 8 (2), **15.**
Security bond, See BOND.
Sentence, Surrender of person undergoing, in British India, S. 11 (1), **17.**
Suspension of, on surrender, S. 11 (2), **17.**
Convicted persons escaping in British India before expiry of, S. 12, **18.**
See DEATH.
Servant, of Her Majesty not a Native Indian subject, *J*, **21.**
Ship, Children born in English, on high seas, *T*, **23.**
Offence committed in foreign, in foreign jurisdiction, *W*, **27.**
Statement on oath. Authentication of, taken by Court outside British India, S. 17 (2), **18, 19.**
Stolen, Property, outside British India received in British India, *U*, **15.**
Stay proceedings, Power of Government to, taken under Ch. III, S. 15, **18.**
Subject, See NATIVE INDIAN.
Summons, or warrant for arrest of fugitive criminal, S. 3 (2), **9.**
Surrender, See ABETTING, ATTEMPTING.
See RE-SURRENDER.
See RE-TAKING.
of fugitive, criminals in case of foreign States, Ch. II, **8, 12.**
Requisition for, S. 3 (1), **8, 9.**
of fugitive criminal—Reference to High Court, S. 3 (7), **9.**
Warrant for, of fugitive criminal, S. 3 (8), **10.**
Lawfulness of custody under warrant for, S. 3 (9), **10.**
Crimes forming part of political disturbances, *E*, **10.**
of person accused of offence in British India, S. 11 (1), **17.**
of person undergoing sentence for offence in British India, S. 11 (1), **17.**
of foreigner by British Govt., *X*, **26.**
of fugitive criminals in case of States other than Foreign States Chap. III, **12—31.**
in case of offence committed on high seas, S 20, **32.**
Suspension, of sentence on surrender, S. 11 (2), **17.**

T

Time, Limit of, of detention of person arrested under S. 10 (1)—S. 10 (3), **17.**
Transfer, of criminal case—Power of Chief Commissioner of Mysore, *J*, **28.**
High Court's power to, case from District Magistrate of Bangalore, *N*, **29.**
Travancore, High Court in extradition cases, *Q*, **30.**
Orders regarding jurisdiction, (17), **43.**

Treaty for extradition of offenders, S. 18, **20**.
Extradition to be regulated according to terms of, *A*, **27**.
Extradition against terms of, *B*, **27**.
See PROCEDURE.
Trial, of British subjects committing offence in Native States, *B*, **7**.
after illegal arrest, *T*. **15**.
of Native Indian subject for offence outside British India, *Y*, **20**.
of British subjects committing offences outside British India, *Y—Q*, **20**, **23**
without Political Agent's certificate, *E*, **21**.

W

Warrant, or summons for arrest of fugitive criminal, S. 3 (2), **9**,
for surrender of fugitive criminal, S. 3 (8), **10**.
Lawfulness of custody under, for surrender, S. 3 (9), **10**.
Power to Magistrate to issue, of arrest, S. 4 (1), **11**.
Issue of, under S. 4 (1) to be reported forthwith, S. 4 (2), **11**.
Person arrested under S. 4 (1) not to be detained unless order received, S, 4 (3). **12**
Issue of, by Political Agents, S. 7 (1), **12**, **13**.
Execution of, issued by Political Agents, S. 7 (2), **13**.
Proclamation and attachment in case of persons absconding, S. 7 (3), **13**.
Endorsement on, by Political Agent, S. 8 (1), **15**.
by Political Agent—Enquiry before issuing it, *P*, **14**.
Magistrate when issuing, need not be within his local limits, *R*, **15**.
Power to Magistrate to issue, of arrest, S. 10 (1), **16**.
No endorsement on, by Political Agent—Bail, *V*, **16**.
Magistrate should forthwith report issue of, under S. 10 (1), S. 10 (2), **17**.
Authentication of, issued by Court outside British India, S. 17 (2), **18**, **19**.
Definition of, in S. 17 (2)—S. 17 (3), **19**.
See RE-TAKING.
Witness, Commission for testimony of, outside British India, S. 21, **33**.
Written statement, of fugitive criminal to be submitted to Government, S. 3 (6) **9**.

Z

Zanzibar, Evidence taken by British Consul at, validity, *W*, **19**.
Power of Bombay High Court to try offence committed at, *B*, **20**.

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THE

INDIAN ARMS ACT, 1878

(ACT XI OF 1878.)

(WITH THE CASE-LAW THEREON)

BY

T. V. SANJIVA ROW,

FIRST GRADE PLEADER, TRICHINOPOLY.

(AUTHOR OF A "DIGEST OF PRIVY COUNCIL RULINGS,"
THE "CURRENT INDEX OF INDIAN CASES,"
THE "LAWYER'S REFERENCE,"
AND
THE "INDIAN EVIDENCE ACT.")

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TABLE OF CASES DIGESTED IN THIS ACT.

			PAGE
		I.L.R. Allahabad Series.	
15 A 27	...	Queen-Empress v. Bhure ...	17, 24
15 A 129	...	——— v. Sangam Lal ...	18, 30
16 A 276	...	——— v. Tota Ram	12, 16, 18, 24, 28
22 A 118	...	——— v. Ganga Din ...	25, 32
22 A 323	...	——— v. Samuel Luke ...	19, 24
24 A 454	...	Emperor v. Harpal Rai ...	16, 24
28 A 302	...	——— v. Ram Sarup ...	18, 27
		I.L.R. Bombay Series.	
9 B 244	...	Triccam Panachand v. The Bombay Baroda and Central India Ry. Company ...	6
9 B 478	...	The Government of Bombay v. Dodyama Bin Basapa ...	18
9 B 518	...	Wala Hiraji v. Hira Patel ...	6, 12
24 B 423	..	Queen-Empress v. Tyab Alli ...	28
		I.L.R. Calcutta Series.	
8 C 473	...	Empress v. Tegha Singh .	25, 30, 32
20 C 444	...	The Queen-Empress v. Kishunwa	16
27 C 692	...	Ahmed Hossein v. The Queen-Empress ...	26, 33
34 C 749	...	Emperor v. Satish Chandra Roy ...	9
35 C 219	...	Prabhat Chandra Chowdhry v. Emperor ...	18, 24, 25
36 C 433	...	L. O. Clarke v. Brojendra Kishore Roy Chowdhry ..	29, 31
		I.L.R. Madras Series.	
5 M 26	...	The Queen v. Bommaya Chetti	17, 18, 19, 33
5 M 28	...	Kunhussa v. The Queen ...	33
5 M 159	...	The Queen v. Suppi ...	11, 12, 20
6 M 60	...	——— v. Siddappa ...	9, 18
7 M 70	...	——— v. Vyapuri Kangani ...	9, 10, 18
8 M 202	...	Queen-Empress v. Khasim Sahib ...	10, 11, 26
10 M 131	...	——— v. Bodappa ...	12
12 M 473	...	——— v. Sitharamayya ...	11, 23
21 M 360 (F.B.)	...	——— v. Jayarami Reddi ...	9, 10, 18
		The Allahabad Law Journal.	
3 A L J 833	...	Ram Sarup v. Emperor ...	18, 27
		The Allahabad Weekly Notes.	
11 A W N 208	...	Queen-Empress v. Alexander William ...	16
12 A W N 221	...	——— v. Bhure ...	16
(1893) A W N 48	...	——— v. Sangam Lal ...	18
14 A W N 82	...	——— v. Tota Ram ...	16
19 A W N 213	...	——— v. Ganga Din ...	17
20 A W N 92	...	——— v. Samuel Luke ...	19, 24
(1906) A W N 11	...	Emperor v. Ram Sarup ..	18, 27

		PAGE
	The Bombay High Court Reports.	
B H C 4th May 1905 ...	Imperator v. Ibrahim Alibhoy ...	10
	The Bombay Law Reporter.	
2 Bom L R 52 ...	Queen-Empress v. Tyebali Carimji Barodawala ...	28
7 Bom L R 474 ...	Emperor v. Ebrahim Alibhoy ...	11
	Ratanlal's unreported Criminal Cases.	
Rat Un Cr C 227 ...	Queen-Empress v. Sakharam ...	26
Rat Un Cr C 507 ...	——— ——— v. Ganpat ...	16, 24
	The Calcutta Law Journal.	
7 C L J 242 ...	Prabhat Chandra Choudhuri v. The Emperor ...	18, 24
8 C L J 75 ...	Brajendra Kishore Roy Chowdhury v. Clarke ...	30
9 C L J 298 ...	Brojendra Kishore Roy Chowdhury v. M. L. A. Luffman ...	29, 31
	The Calcutta Weekly Notes.	
3 C W N 394 ...	Kali Nath Singh, *In the matter of* ...	16, 25
4 C W N 750 ...	Ahmed Hossain v. The Queen-Empress ...	26, 33
11 C W N 971 ...	The Deputy Legal Remembrancer v. Satish Chandra Roy ...	9
12 C W N 272 ...	Probhat Chandra Chowdhury v. The Emperor ...	18, 24
12 C W N 973 ...	Brajendra Kishore Roy Chowdhury v. L.O. Clarke...	30
13 C W N 458 ..	L O. Clarke v. Brajendra Kissore Roy Chowdhuri...	29, 30, 31
	The Madras Law Times.	
5 M L T 162 ...	Abdul Kadir Sahib, *In re* ...	33
3 M L T 190 ...	Probate Chandra Chowdhuri, *In re* ...	18, 24
5 M L T 367 ...	L. O. Clarke v. Brojendra Kishore Roy Chowdhury...	29, 31
	Weir's Criminal Rulings.	
1 Weir 654 ...	H. C. Proceedings, 4th September 1879 No. 1424 ...	8, 29
1 Weir 655 ...	Suppi, *In re* ...	10, 23
1 Weir 657 ...	Venkiah, *In re* ...	12
1 Weir 658 ...	Rasool Sahib, *In re* ...	9
1 Weir 659 ...	Queen-Empress v. Jayarami Reddi ...	9
1 Weir 661 ...	Koraga, *In re* ...	17
1 Weir 662 ...	Revision Case No. 72 of 1882 ...	17
1 Weir 663 ...	Venkatrayadu, *In re* ...	16, 33
1 Weir 664 ...	Queen-Empress v. Kasim Sahib ...	26
1 Weir 665 ...	Bodappa, *In re* ...	12
1 Weir 666 ...	Pakir Ahmed, *In re* ...	18, 19
	The Central Provinces Law Reports.	
12 C P L R 8 ...	Empress v. Chaitoo Goud ...	9
12 C P L R 10 ...	——— v. Barwar Teli ...	10, 18
14 C P L R 112 ...	——— v. Sonia Teli ...	24
	The Nagpur Law Reports.	
3 N L R 53 ...	Emperor v. Dhansingh ...	9, 10, 18
4 N L R 78 ...	——— v. Mukunda ...	28
4 N L R 134 ...	Suraj Prasad v. Emperor ...	2

				PAGE
		The Punjab Record.		
27 P R 1885	...	Narain Singh v. Empress	...	19
38 P R 1889	...	Nurdin v. Empress	...	10
20 P R 1890 Cr	...	Jaman Khan v. Empress	...	10, 11
16 P R 1900 (Cr)	...	Crown v. Santa Singh	...	8, 9
1 P R 1902	...	Empress of India v. Bishen Sing	...	19, 24
1 P R 1903 (Cr)	...	Baman v. The Emperor of India	...	32
52 P R 1905 (Cr)	...	King Emperor v. Sher Zaman	...	25
6 P R 1908 Cr	...	——— v. Samiullah	...	10, 25
		The Punjab Law Reporter.		
2 P L R 240	...	Sundar Singh v. The Empress	...	25
3 P L R 13	...	The Empress of India v. Bishen Singh	...	24, 32
4 P L R 481	...	Sharaf Khan v. The Emperor	...	30
148 P L R 1908	...	The Crown v. Samiullah	...	10
		The Punjab Weekly Reporter.		
14 P W R 1908	...	The Crown v. Samiullah	...	10
		The Lower Burma Rulings.		
L B R (1872-92) 168		Eugene Badelier v. Rebecca Chill	...	11, 23, 28
L B R (1872-1892) 426		Queen-Empress v. Nga Shwe Hlwa	...	18, 19, 33
L B R (1872-1892) 536		——— v. Nga Po Ka	...	18, 19, 33
3 L B R 1	...	Ebrahim Dawooodji Babi Bawa v. King Emperor	...	12
4 L B R 247	...	Kaka v. King Emperor	...	33
5 L B R 83	...	Adams v. King-Emperor	...	24, 27
		The Upper Burma Rulings.		
U B R (1897—1901), 1	...	Queen Empress v. Nga Myat Aung	...	16
		The Sind Law Reporter.		
1 S L R 18	...	The Crown v. Azu Walad Bangar	...	10, 27
		The Criminal Law Journal.		
1 Cr L J 112	...	Gurmukh Singh v. Naman	...	18, 24
2 Cr L J 372	...	Ebrahim Dawooji Babi Bawa v. Emperor	...	12
2 Cr L J 449	...	Emperor v. Ebrahim Alibhoy	...	11
3 Cr L J 88	...	——— v. Ram Sarup	...	18, 27
4 Cr L J 239	...	——— v. Maung Shwe Thet	...	9
5 Cr L J 435	...	——— v. Dhansingh	...	9, 10, 18
6 Cr L J 227	...	The Deputy Legal Remembrancer v. Satis Chandra Roy	...	9
7 Cr L J 350	...	Emperor v. Samiullah	...	10
8 Cr L J 18	...	——— v. Mukunda	...	28
8 Cr L J 65	...	Kaka v. Emperor	...	33
9 Cr L J 259	...	The Crown v. Azu	...	10, 27

THE INDIAN ARMS ACT, 1878.

CONTENTS.

PREAMBLE.

I.—Preliminary.

SECTIONS

1. Short title.
   Local extent.
   Savings.
2. Commencement.
3. Repeal of enactments.
4. Interpretation clause.

II.—Manufacture, Conversion and Sale.

5. Unlicensed manufacture, conversion and sale prohibited.

III.—Import, Export and Transport.

6. Unlicensed importation and exportation prohibited.
   Importation and exportation of arms and ammunition for private use.
7. Sanction of Local Government required to warehousing of arms, etc.
8. (*Repealed.*)
9. (*Repealed.*)
10. Power to prohibit transport.
    Transhipment of arms.
11. Power to establish searching stations.
12. Arrest of persons conveying arms, etc., under suspicious circumstances.
    Procedure where arrest made by person not Magistrate or Police-officer.

IV.—Going armed and possessing Arms, etc.

13. Prohibition of going armed without license.
14. Unlicensed possession of fire-arms, etc.
15. Possession of arms of any description without license prohibited in certain places.
16. Arms, of which possession has become unlawful, to be deposited at police-station.

V.—Licenses.

17. Power to make rules as to licenses.
18. Cancelling and suspension of license.

VI.—Penalties.

SECTIONS

19. For breach of sections 5, 6, 10, 13 to 17.
20. For secret breaches of sections 5, 6, 10, 14 and 15.
    For concealing arms, etc.
21. For breach of license.
22. For knowingly purchasing arms, etc., from unlicensed person.
    For delivering arms, etc., to person not authorised to possess them.
23. Penalty for breach of rule.
24. Power to confiscate.

VII.—Miscellaneous.

25. Search and seizure by Magistrate.
26. Seizure and detention by Local Government.
27. Power to exempt.
28. Information to be given regarding offences.
29. Sanction required to certain proceedings under section 19, clause (*f*).
30. Searches in the case of offences against section 19, clause (*f*), how conducted.
31. Operation of other laws not barred.
32. Power to take census of fire-arms.
33. Notice and limitation of proceedings.

THE FIRST SCHEDULE.—ENACTMENTS REPEALED.

THE SECOND SCHEDULE. (*Repealed*).

THE INDIAN ARMS ACT, 1878.

ACT No. XI OF 1878.

[*15th March, 1878.*]

An Act to consolidate and amend the law relating to Arms, Ammunition and Military Stores.

Preamble.

Whereas it is expedient to consolidate and amend the law relating to arms, ammunition and military stores; It is hereby enacted as follows:

I.—Preliminary.

Short title. Local extent.

1. This Act may be called the Indian Arms Act, 1878; and it extends to the whole of British India [1].

Savings.

But nothing herein contained shall apply to—

(*a*) arms, ammunition or military stores on board any sea-going vessel and forming part of her ordinary armament or equipment, or

(*b*) the manufacture, conversion, sale, import, export, transport, bearing or possession of arms, ammunition or military stores by order of the Government, or by a public servant [2] or a volunteer enrolled under the Indian Volunteers Act, 1869, in the course of his duty as such public servant or volunteer.

(Notes).

I.—" And it extends to the whole....India."

(1) **Local extent of the Act.**

(*a*) This Act has been declared to be in force in Upper Burma, generally, except the Shan States. Burma Laws Act XIII of 1898, 4 (1). **A**

(*b*) It is also in force in the Santhal Parganas. Santhal Parganas Settlement Reg. III of 1872 as amended by Santhal Parganas Justice and Laws Reg. III of 1899, S. 3. **B**

(*c*) It has also been extended to British Baluchistan with certain exceptions under S. 5 of the Scheduled Districts Act. Gazette of India, 1895, Pt. II, p. 921. **C**

(2) **" British India," Meaning.**

The term " British India " shall mean all territories and places within Her Majesty's dominions, which are for the time being governed by Her Majesty through the Governor General of India, or through any Governor or other Officer subordinate to the Governor General of India. (See S. 3, cl. (7), General Clauses Act X of 1897). **D**

1.—"And it extends to the whole....India."—(Concluded).

(3) **Scope of the term "British India."**

By Acts XIV and XV of 1874, not only Aden, but the Laccadive Islands in the Indian Ocean, the Andaman and Nicobar Islands, and Ajmere and Merwara in the centre of Rajputana, are declared to be parts of British India, which shows that the Indian Legislature has given to the words "British India" a much more extended meaning than, at first sight, they would appear to indicate. 9 B. 244 (249). E

2.—"The manufacture, conversion....public servant."

(1) **License under the Explosives Act has the effect of a license under this Act.**

A license granted under the Indian Explosives Act, IV of 1884, for the manufacture, possession, sales, transport or importation of an explosive may be given the effect of a like license under this Act. S. 15, Indian Explosives Act (IV of 1884). F

(2) **Sale of arms by public servant—Excepted.**

The sale of arms by the Nazir of the Court, in execution of a decree, is a sale by a public servant in discharge of his duty and is therefore excluded by this sub-section from the operation of the Act. 9 B. 518. G

(3) **Offences under the Act, triable in the Presidency town.**

All offences against the provisions of this Act may be inquired into or tried in a presidency town, whether the offence is stated to have been committed within such town or not; provided that the offender and all the witnesses necessary for his prosecution are to be found within such town. S. 184, Cr. P. Code (Act V of 1908). H

(4) **Officers authorised and occasions when carrying of arms is permissible.**

MADRAS.

Officers required to carry arms for the performance of their duty within the meaning of S. 1 (*b*), and the occasions or kinds of duty at which such carrying of arms is necessary :—

(*a*) Deputy Jailors and Warders of all Grades in the Jail Department.	When on actual duty.
(*b*) Head Constables and Constables in the Police Department.	When escorting prisoners or treasure, when any serious breach of the peace occurs or is anticipated, and when they visit villages on beat duty at night or patrol high roads.
Ghat Talaries.	When they assist the regular police in guarding roads and hill passes.
(*c*) Sub-Inspectors, petty officers and peons in the Salt and Abkari Department.	While forming part of a treasury escort. On preventive duty, and when they apprehend any resistance (with the previous order in writing of the Inspector of the circle.)
Petty officers and peons in the Salt and Abkari Department.	While on treasury, platform or line guard duty.

—(G. O. No. 2014, dated 26th Oct., 1892). I

2.—"The manufacture, conversion....public servant."—(Concluded).

(5) **Postal employees exempted from taking license.**

UNITED PROVINCES.

Postal employees who are authorised by, or under the authority of, the Post-master General to carry arms when on duty are covered by S. 1 (*b*) of this Act, and are exempt from the necessity to take out licenses for such arms. **J**

The Post-master General will furnish the Magistrate of each district with a list of the postal employees in the district whom he has authorised to carry arms in the course of their duty, or of officers the incumbents of which are so authorised. He will also specify in the list the weapons authorised in each case, and the circle within which it may be carried. (Notn. No. 3389-90, 22nd Nov., 1898). **J 1**

(6) **Lead cutting swords imported by Native Cavalry regiments.**

——are under section 1 (*b*) of the Arms Act exempt from the operation of the Act and the rules thereunder. (Home Dept. Letter No. 8-869-878, dated the 29th March, 1897). **K**

(7) **Katyars.**

In the District of Poona—or small daggers which are used in marriage processions are excluded from the operation of the Act. (Bombay Govt. Notn. No. 3563, dated the 4th May, 1897). **L**

Commencement.

2. This Act shall come into force on such day as the Governor General in Council by notification in the Gazette of India appoints [1].

(Notes).

1.—"On such day....appoints."

Commencement of the Act.

This Act came into force on the 1st of Oct., 1878. Notification, No. 1169, dated (27-6-1878). Gazette of India, 1878, Pt. I, p. 389.

Repeal of enactments.

3. On and from that day the enactments mentioned in the first schedule hereto annexed shall be repealed to the extent specified in the third column of the said schedule. But all authorities and permissions given, licenses and exemptions granted, orders and appointments made, notifications published, and rules, conditions and forms prescribed, under any enactment hereby repealed, shall be deemed to be respectively given, granted, made, published and prescribed under this Act.

And all such authorities, permissions, licenses and exemptions shall, except as otherwise provided by this Act, continue in force for the periods for which they may have been given or granted respectively, or where no such period is expressly fixed, for one year from the date on which this Act comes into force, and shall then cease to have effect.

Interpretation clause.

4. In this Act, unless there be something repugnant in the subject or context,—

" cannon " includes also all howitzers, mortars, wall-pieces, mitrailleuses and other ordnance and machine-guns, all parts of the same, and all carriages, platforms and appliances for mounting, transporting and serving the same :

" arms " includes fire-arms, bayonets, swords, daggers, spears, spear-heads and bows and arrows, also cannon and parts of arms, and machinery for manufacturing arms [1] :

" ammunition " [2] includes also all articles specially designed for torpedo service and submarine mining, rockets [3], gun-cotton, dynamite, lithofracteur and other explosive or fulminating material, gun-flints, gun-wads, percussion-caps, fuses and friction-tubes, all parts of ammunition [4] and all machinery for manufacturing ammunition [5], but does not include lead, sulphur or saltpetre :

" military stores," in any section of this Act as applied to any part of British India, means any military stores to which the Governor General in Council may from time to time, by notification in the Gazette of India, specially extend such section in such part, and includes also all lead, sulphur, saltpetre and other material to which the Governor General in Council may from time to time so extend such section [6] :

" license " means a license granted under this Act, and " licensed " means holding such license.

(Notes).

I.—" 'Arms' includes....arms."

(1) **The definition of " arms " not exhaustive.**

(i) Except so far as the definition expressly includes other weapons, the word 'arms' must be understood to mean weapons of offence, suitable for warfare. The definition of arms in the section is not exhaustive and exclusive. L.B.P.J. (1893—1901) 416 (417) ; see also 16 P.R. 1900. **M**

(ii) Where the circumstances of a case show that a weapon or instrument is carried or possessed for the purpose of offence or defence, and not as an article of domestic or agricultural utility, there is no reason why such weapon or instrument should not be held to fall within the category of "arms." 16 P.R. 1900 (Cr.). **N**

(2) **Battle-axe—Whether an arm.**

The word 'includes' is not intended to be exhaustive. A battle-axe is an arm within the meaning of this section. 1 Weir 654. **O**

(3) **Big clasp knife—Whether an arm.**

A big clasp-knife is neither intended for, nor suitable for warfare, and so is not an 'arm', within the meaning of this section. The purpose for which a weapon is carried cannot be a sufficient test of whether it is an arm or not. L.B.P.J. (1893-1901) 487 ; but see 16 P.R. 1900 (Cr.) **P**

1.—"Arms includes....arms"—(Continued).

(4) **Table knife.**

A—however carried or intended to be used is not an arm within the Act. 9 Burm. 207. **Q**

(5) **Sword-stick—Whether an arm.**

A sword-stick is a sword within the meaning of this section. Neither the length, breadth or shape of the blade, nor the handle of the weapon affords any certain test as to whether an instrument is a sword or not. Whatever can be used as a weapon of attack or defence for cutting as well as for thrusting, and is not an ordinary implement for domestic purposes, comes within the meaning of the statute. 34 C. 749=11 C.W.N. 971=6 Cr. L.J. 227. **R**

(6) **Air-gun—Whether an arm.**

Air guns which are not adapted for use with explosive substances are classed as toys by the Government and do not come within the definition of 'arms' under this section. 12 Bur. L.R. 201=4 Cr. L.J. 239. **S**

(7) **Patterns of air-guns declared to be toys.**

The following patterns of air guns have been declared to be toys and should not therefore be treated as arms for the purpose of the Indian Arms Act, 1878, and the rules framed thereunder:—

1. The Britannia.
2. The Gem (two kinds).
3. The Jewel.
4. The Militia.
5. The Birmingham small arms (ladies' model).

(*Vide* Madras Govt. Notn. No. 680 dated the 19th Dec. 1908 and U.P. G.O. No. 61, dated the 7th January 1909). **T**

(8) **Long-handled gandasas.**

—in Lahore, Amritsar and Ferozpur Districts being so very rarely carried or possessed except for purposes of offence and defence, the executive Officers of Government might properly treat the same as "arms" within the meaning of the Act. 16 P.R. 1900 (Cr.). **U**

(9) **Unserviceable fire-arms and parts of fire-arms—Whether an arm.**

(*a*) In including parts of arms in the meaning of arms, the Legislature intended to provide against the importation and retention of arms in parts which might be put together at any moment and used as fire-arms. A fire-arm which is defective and otherwise unserviceable, is not within the meaning of this Act, for instance, a gun without a trigger. 6 M. 60 (**F.B.**) & 1 Weir 658, *F*; see, also, 12 C.P.L.R. 8 (10); (*Overruled by* 21 M. 360 (**F.B.**)=1 Weir 659). **V**

(*b*) A broken and unserviceable gun is not a 'part of arms' within the meaning of this section. 1 Weir 658. **W**

(*c*) A gun-barrel and nipple, if serviceable, comes within the definition of 'arms' in this section. 7 M 70. **X**

(*d*) A gun-barrel, so long as it can be used as such is an arm within the meaning of this section; but it is not a fire arm within the meaning of S. 11, *infra*; nor is it one of the articles described in that section. 12 C.P.L.R. 8 (10); **But** see 3 N.L.R. 53—5 Cr. L.J. 435. **Y**

1.—"Arms includes....arms"—(Concluded).

(*e*) A revolver the trigger of which is out of order is a fire-arm within the meaning of the Act. In such cases, the question is not so much whether the particular weapon is serviceable as a fire-arm, but whether it has lost its specific character and has so ceased to be a fire-arm. Whether in any particular case, the instrument is a fire-arm or not is a question of fact to be determined according to circumstances. 29 M. 360 (**F.B.**); 6 P.R. 1908 (Cr.). **Z**

(*f*) The test for finding out whether a weapon is an arm is not whether the weapon is serviceable. but whether it comes within the legal definition of 'arms.' 6 P.R. 1908 (Cr.) = 14 P.W.R. 1908 = 7 Cr. L.J. 350 = 148 P.L.R. 1908. **A**

(*g*) The question whether a particular instrument is a fire-arm or not is a question to be determined by considering whether it has lost its specified character and ceased to be a fire-arm, but not whether the fire-arm is serviceable or not. This is a question of fact. 1 Sind L.R. 18 (19) (**F.B.**) = 9 Cr. L.J. 259. **B**

(*h*) Fire-arms in this section, include parts of fire-arms. 3 N.L.R. 53 (55) = 5 Cr. L.J. 435 ; 7 M. 70. **C**

(*i*) So, an old-fashioned gun-barrel which is in good order, is a fire arm within the meaning of this section. 3 N.L.R. 53 = 5 Cr. L.J. 435 ; 12 C.P.L.R. 10, *diss.* **D**

(10) **Sword-hilts—Whether an arm.**

Sword-hilts are parts of arms within the meaning of this section. 38 P.R. 1889 (Cr.) **E**

(11) **Chhavi heads—Whether an arm.**

A *Chhavi* head, being the part of a *Chhavi* may be an arm within the meaning of this section. 20 P.R. 1900 (Cr.). **F**

2.—"Ammunition" includes also all articles.

(1) **'Ammunition'—Meaning of.**

The term "ammunition" read in combination with arms and military stores, means any explosive material capable of being used for purposes of warfare. Gunpowder comes within the meaning of this section even when intended merely for the manufacture of fire-works; though when it has been actually made into fire-works an offence would not be committed. 8 M. 202. **But** see 5 M. 159 = 1 Weir 655. **G**

(2) **Empty cartridge cases—Not ammunition.**

Empty cartridge cases of which the caps have been exploded do not come under the definition of 'ammunition' within the meaning of this Act. 20 P.R. 1890 (Cr.). **But** see *infra*. **H**

(3) **Empty cartridge cases in which the caps have been exploded.**

——— come within the definition "ammunition." *Imperator* v. *Ebrahim Alibhoy*, Bombay High Court, 4th May 1905. **But** see *supra*. **I**

(4) **Iron droppings or pellets.**

——— (known in N. W. P. as *boonda*), are ammunition and should be treated as such for the purposes of this Act. (Home Dept. Letter No. 1630, dated 7th Oct. 1881). **J**

3.—"Rockets."

Rockets and other fire-works are not arms or ammunition.

The rockets referred to herein are war-rockets. The manufacture or possession of fire-works, including rockets which are mere fire-works does not come within the prohibition of this section. 5 M. 150; *but* see 8 M. 202 (204). **K**

4.—"All parts of ammunition."

***"All parts of ammunition"*—Meaning of.**

The phrase "all parts of ammunition" includes portions of that which would come within the description of ammunition, as for instance, "empty cartridge cases." 7 Bom. L.R. 474=2 Cr.L.J. 449. **L**

5.—"All machinery....ammunition."

Machinery for manufacturing ammunition.

An instrument for re-capping cartridge cases of the Martini-Henri rifles is not machinery for manufacturing ammunition within the meaning of this Act. 20 P.R. 1890 (Cr.). **M**

6.—"Any military stores to which...section."

For notification under this section made by the Governor-General in Council, as well as for those under S. 11 and section 27, *infra*, see list of general rules and orders, Edn. 1902, pp. 55-64. **N**

II.—Manufacture, Conversion and Sale.

Unlicensed manufacture, conversion and sale prohibited.

5. No person shall manufacture, convert or sell [1], or keep, offer or expose for sale, any arms, ammunition or military stores [2] except under a license and in the manner and to the extent permitted thereby.

Nothing herein contained shall prevent any person from selling any arms or ammunition which he lawfully possesses for his own private use to any person who is not by any enactment for the time being in force prohibited from possessing the same; but every person so selling arms or ammunition to any person other than a person entitled to possess the same by reason of an exemption under section 27 of this Act shall, without unnecessary delay, give to the Magistrate of the district, or to the officer in charge of the nearest police-station, notice of the sale and of the purchaser's name and address [3].

(Notes).

1.—"No person....sell."

(1) **Sale by licensee's agent—not illegal.**

(*a*) A person licensed to sell arms, may authorise any other person to sell arms as his agent. As the sale takes place under a license, it is not prohibited. L.B.R. (1872—92), 168. **O**

(*b*) The sale by the agent of a license-holder of sulpher and ammunition is not prohibited by this section. 12 Mad. 473. **P**

1.—"No person....sell"—(Concluded).

(2) **Repair of arms - Not illegal.**

This section uses the word 'convert' and not the word 'repair.' The term 'manufacture' cannot be held to include 'repair' also; so, repairing of arms without license is not prohibited by this section. 1 Weir 653 (656). See, also, 16 A. 276. See, also, Home Dept. Res. No. 69—2039—50, dated 15th Dec. 1881. **Q**

(3) **Conversion of match-lock to percussion-gun—Legality of.**

The word 'manner' in this section appears to have reference to the conditions under which a license for the weapon is given, *e.g.*, as to how it is to be kept and used and as to its being produced at the times required. So, a person who has obtained a license for a match-lock is not liable to conviction for being in possession of a percussion-gun into which the match-lock has been converted. 10 M. 131=1 Weir 665. **R**

(4) **Duty of Officer or soldier wishing to dispose of any arms or ammunition.**

"If any officer or soldier wishes to dispose of any arms or ammunition either by private sale or publication, he will ascertain that the would-be purchaser is a person entitled by law to possess the same, and if such person's name does not appear in the Official Army or Civil list, he will apply to the Magistrate or Deputy Commissioner of the district or the local Political Officer, as the case may be for permission for the transaction to take place." (See, Home Dept. Letter, Nos. 902 and 6315, dated 20th Feb. 1901 and 13th Dec. 1901; U.P.G.O. Nos. 1751 and 1115, the 1st June and 15th April, 1901). **S**

(5) **Sale of arms conducted by Officers of Government.**

All Officers of Government, whose duty it may be to conduct sales of arms, are required to satisfy themselves, before the confirmation of sales, by a reference to the District Magistrate, that the purchasers are entitled to possess such arms. Bom. Govt. Cir. No. 2823, 2nd May 1901. **T**

2.—"Any arms....stores."

(1) **Sale of dagger-shaped clasp-knives—Illegal.**

Instruments, which though called clasp-knives, yet, are shaped like a dagger and one efficient weapon for stabbing, are arms within the meaning of this Act and the manufacture and sale of them is contrary to the provisions of this section and is punishable. 3 L.B.R. 1=2 Cr.L.J. 372. **U**

(2) **Manufacture or possession of fire-works—Not prohibited by this section.**

The manufacture or possession of fire-works without a license is not contrary to this section. 5 M. 159. **V**

3.—"Shall, without unnecessary delay....address."

(1) **Sale before permission from Magistrate but after notice—No offence**

The sale of a gun, used for private use, after notice to the Magistrate but before the receipt of his permission, is not an offence under S. 19 (*b*) of the Act. 1 Weir 657. **W**

(2) **Court ordering a sale—Notice to the Magistrate—Propriety.**

The Court ordering a sale of arms in execution of a decree does not come within the prohibition of this Act (see S. 1 cl. (*b*); but it would be a proper thing to give the notice of the sale and of the purchaser's name and address contemplated by this section. 9 B. 518. **X**

III.—Import, Export and Transport.

Unlicensed importation and exportation prohibited.

6. No person shall bring or take by sea or by land into or out of British India any arms, ammunition or military stores except under a license and in the manner and to the extent permitted by such license [1].

Importation and exportation of arms and ammunition for private use [2].

Nothing in the first clause of this section extends to arms (other than cannon) or ammunition imported or exported in reasonable quantities for his own private use by any person lawfully entitled to possess such arms or ammunition; but the Collector of Customs or any other officer empowered by the Local Government in this behalf by name or in virtue of his office may at any time detain such arms or ammunition until he receives the orders of the Local Government thereon.

Explanation.—Arms, ammunition and military stores taken from one part of British India to another by sea or across intervening territory not being part of British India, are taken out of and brought into British India, within the meaning of this section.

(Notes).

1.—"No person.... license."

Prohibition of unlicensed importation and exportation.

In exercise of the powers conferred by S. 19 of the Sea Customs Act, 1878, the Governor General in Council prohibits the bringing or taking by sea or by land into or out of British India of arms, ammunition or military stores as defined in this Act, except in accordance with the provisions of that Act and Orders issued thereunder. (See F. & C. Dept. Notn. No. 225, 16th Aug. 1879). **Y**

2.—"Importation.... private use."

(1) **Nature of exemption in cl. (2) of S. 6.**

The exemption in cl. (2) of S. 6 of this Act, covers only the export of arms and ammunition by a privileged person for his own personal use, not the export of arm and ammunition by other people for the use of a privileged person. (See For. Dept. Letter No. 1327—I, 23rd March 1891). **Z**

(2) **"Lawfully entitled to possess," meaning of.**

The words "lawfully entitled to possess," apply to persons licensed according to law to possess arms, as well as to persons exempted from the operation of Ss. 13 & 14 of the Act. (See Mad. Govt No. 2486, 5th Dec. 1891; Home Dept. No. 1024, 17th June 1880, Home Dept. No. 1862, 14th Dec. 1880). **A**

(3) **Masonic swords when not imported for sale.**

——————should be admitted without license under the second clause of section 6 of the Act, a license being required when they are intended for sale. (Home Dept. Letter No. 1880—83, dated the 19th June 1897.) **B**

2.—"Importation....private use"—(Concluded).

(4) **A sword or other similar weapon carried in marriage processions in the province of Sind.**

———may be allowed to be carried free of license fee with the permission of the local Magistrate. The weapon should be borrowed from some person who possesses a license, and the borrower should be required to state in his application the name of the licensed owner from whom he proposes to obtain the temporary use of the weapon. (Home Dept. Letter No. 1641, dated the 28th July 1899). **C**

(5) **Officers empowered to detain arms and ammunition under the section.**

(*a*) BOMBAY PRESIDENCY.

Political Resident at Aden (See Notn. No. 3467, 16th June 1879). **D**

(*b*) BENGAL.

All Magistrates and Police Officers not below the grade of Inspector. (See Notification dated 15th August, 1879). **E**

(*c*) CENTRAL PROVINCES.

All Magistrates and all Officers of the Police not below the rank of Assistant District Superintendent of Police. See Book-Circular No. XXVII, dated 4th Aug. 1899). **F**

(*d*) PUNJAB.

All Police Officers not below the rank of Officer in charge of a Station. (See Notification No. 943, dated 10th July, 1907). **G**

(*e*) UNITED PROVINCES.

Any Magistrate, Justice of the Peace, District or Assistant District Superintendent of Police, and any Police Officer not being lower in rank than an officer in charge of a reporting Police Station. (See Geo. No. 229½ dated 27th Feb., 1879). **H**

Sanction of Local Government required to warehousing of arms, etc. 1.

7. Notwithstanding anything contained in the Sea Customs Act, 1878, no arms, ammunition or military stores shall be deposited in any warehouse licensed under section 16 of that Act without the sanction of the Local Government.

(Notes).

1.—"Sanction of....warehousing of arms, etc."

(1) **Warehouse at Moyapur.**

The——— is declared to be a warehouse for the deposit of ammunition under S. 7. (See Bengal Government Notification, 24th March, 1879). **H1**

(2) **Premises of any licensed dealer in arms in Calcutta.**

The———licensed also as a private warehouse under S. 16 of the Sea Customs Act, 1878, and approved of in writing by the Commissioner of Police may be used as a place for the deposit of arms under this section. (*Ibid.*) **I**

8. [*Levy of duties on arms, etc., imported by sea.*] *Repealed by the Repealing and Amending Act, 1891 (XII of 1891).*

9. [*Power to impose duty on imports by land.*] *Repealed by the Repealing and Amending Act, 1891 (XII of 1891).*

Power to prohibit transport.

10. The Governor General in Council may, from time to time, by notification in the Gazette of India,—

(*a*) regulate or prohibit the transport of any description of arms, ammunition or military stores over the whole of British India or any part thereof, either altogether or except under a license and to the extent in the manner permitted by such license, and

(*b*) cancel any such notification.

Transhipment of arms.

Explanation.—Arms, ammunition or military stores transhipped at a port in British India are transported within the meaning of this section.

Power to establish searching stations.

11. The Local Government, with the previous sanction of the Governor General in Council, may, at any places along the boundary-line between British India and foreign territory, and at such distance within such line as it deems expedient, establish searching posts at which all vessels, carts and baggage-animals, and all boxes, bales and packages in transit, may be stopped and searched for arms, ammunition and military stores by any officer empowered by such Government in this behalf by name or in virtue of his office.

Arrest of persons conveying arms, etc., under suspicious circumstances.

12. When any person is found carrying or conveying any arms, ammunition or military stores, whether covered by a license or not, in such manner or under such circumstances as to afford just grounds of suspicion that the same are being carried by him with intent to use them, or that the same may be used, for any unlawful purpose, any person may without warrant apprehend him and take such arms, ammunition or military stores from him.

Procedure where arrest made by person not a Magistrate or a Police-officer.

Any person so apprehended, and any arms, ammunition or military stores so taken by a person not being a Magistrate or Police-officer, shall be delivered over as soon as possible to a Police-officer.

All persons apprehended by, or delivered to, a Police-officer, and all arms and ammunition seized by or delivered to any such officer under this section, shall be taken without unnecessary delay before a Magistrate.

IV.—Going armed and possessing Arms, etc.

Prohibition of going armed without license.

13. No person shall go armed with any arms [1] except under a license and to the extent and in the manner permitted thereby [2].

Any person so going armed without a license or in contravention of its provisions may be disarmed by any Magistrate, Police-officer or other person empowered by the Local Government in this behalf by name or by virtue of his office [3].

(Notes).

1.—"No person shall go armed with any arms."

(1) **'Going armed,' meaning of.**

(*a*) The words "going armed" are not defined in the Act, and their meaning has to be considered with reference to the ordinary use of the language and the purpose and object of the enactment in which they occur. U.B.R. (1897—1901), Vol. I, p. 1. **J**

(*b*) The term 'going armed' in this section means 'carrying arms.' 1 Weir 663. **K**

(2) **"Going armed" what amounts to.**

When a person carries a weapon with the intention of using it as a weapon, when necessity or opportunity arises, he is said to be going armed. 24 A. 454. **L**

(3) **Mere temporary possession—Not prohibited.**

(*a*) Mere temporary possession of an arm for purposes other than for its use as such as when a servant carries the gun of his licensed master to the Blacksmith's for repair, does not come within the purview of this section. 16 A. 276; 24 A. 454; 11 A.W.N. 208; 12 A.W.N. 221; 14 A.W.N. 82. **M**

(*b*) This section ought not to be strictly construed. A servant carrying the arms of his master licensed to carry arms, does not come under the prohibition of this section. U.B.R. (1897—1901), 1. **N**

(*c*) Any retainer of the licensee can carry the arms of his master and the exemption is not limited to the carrying of arms in the presence of the actual licensee alone. 20 C. 444. (*followed* in 3 C.W.N. 394). **O**

(*d*) The law does not provide that the license should always be on the person of the particular man when carrying arms. If, on being required to show his license, the bearer of arms is prepared to produce it, on being given a reasonable opportunity to get it, and such license exists, he should not be prosecuted. The production of the license at the trial is a sufficient answer to the charge under this section and to show that the prosecution was without proper consideration. (*Ibid.*) **P**

(4) **Going armed with spears in the Bombay Presidency—Exemption.**

Under cl. (*j*) of S. 2 of the rules under S. 27 of the Arms Act, spears are exempted in the Bombay Presidency from the operation of all prohibitions and directions contained in this section as well as in Ss. 14, 15, & 16, *infra*. Rat. Unrep. Cr. Cas. 507. **Q**

1.—"No person shall go armed with any arms"—(Concluded).

(5) **A person found going about armed —Presumption.**

Going about armed without a license is against the provisions of this section. A person who is found going about with an arm, must. in the absence of proof to the contrary, be presumed to be carrying it with the intention of using it, should an opportunity for using it arise. 15 A. 27. **R**

(6) **Exemption for "personal use"—Servant carrying arms—Legality of.**

When a person is exempted by the Local Government under the provisions of S. 27, *infra*, from the operation of this section, and when such exemption was limited to the carrying of arms only for his 'personal use' the limitation does not prohibit the carrying of arms by the servant of such person for the use of his master. The term 'personal use' does not mean the use of the arms personally alone, but also includes, the use of the arms by the servants for the purpose of his master. 19 A.W.N. 213. **S**

2.—"Except under....thereby."

(1) **Carrying arms for some other purpose—License to carry arms for some special purpose—Legality.**

In a place where bisons are notoriously in the habit of injuring crops, a person having a license to kill wild animals that injure crops can also shoot them for sport. The terms of the license do not limit the carrying of arms for the purpose of protection merely, but extend to the killing of the wild animals for sport also. 5 M. 26=1 Weir 662 (663). **T**

(2) **License—Need not be taken by the license wherever he goes.**

This section cannot be held to mean that the licensee must take his license along with him whenever he goes armed. 1 Weir 661. **U**

3.—"Or other person empowered....Office."

Government Notifications, etc.

Officers empowered to disarm persons going armed without license, or, in contravention of the provisions of the section.

(*a*) BOMBAY PRESIDENCY.

The under mentioned Officers of the Forest Department in the Northern Division, Southern Division and in Sindh.

I. Conservator of Forests.
II. Deputy Conservators of Forests.
III. Assistant Conservators.
IV. Extra Assistant Conservators.
V. Rangers.
VI. Foresters.
VII. Forest Guards.
VIII. Salt Inspectors in Sindh in virtue of their Office.

(See Notification. No, 6714, 7th November, 1879, Notification. No. 9355, 29th Nov. 1892, Notification. No. 3049 A, 8th June 1889).

ix. Officers, sepoys, and peons of the Salt Department employed on the Goa and on the Northern Frontiers. (See Notification. No. 410, 18th Jan. 1895; Notification. No. 4082, 11th Aug. 1905). **Y & W**

(*b*) BURMA.

All headmen and rural policemen appointed under S. 25 of the Burma Village Act, 1907. (See Notification No. 112, 25th Aug. 1909). **X**

3.—"Or other person empowered....Office"—(Concluded).

Government Notifications etc.—(Concluded).

(c) CENTRAL PROVINCES.

All Forest Officers not below the rank of Assistant Conservator and all Revenue Officers not below the rank of Naib-Tahsildar. (See Notification No. 2595-A, 18th June, 1895). **Y**

(d) MADRAS PRESIDENCY.

All Magistrates, Police-Officers and *Adigaris* in the Malabar District. (See Geo. No. 157, 5th Dec. 1885). **Z**

(e) UNITED PROVINCES.

The Conservator of Forests, School Circle, and all Deputy Conservators, Assistant Conservators, and Sub-Assistant Conservators (including Probationers). Patwaris in Jaunsar-Bawar have similar powers. (See Geo. No. 274, 11th March 1890: Geo. No. 1077-VI-620-B. 29th April, 1891. **A**

Unlicensed possession of fire-arms, etc.

14. No person shall have in his possession or under his control any cannon or fire-arms [1], or any ammunition or military stores, except under a license and in the manner and to the extent permitted thereby. [2] * * *

(Notes).

1.—"No person....fire-arms."

(1) **What is a fire arm.**

As to what is a fire-arm within the meaning of this section, see 6 M. 60; 7 M. 70; 21 M. 360 (**F.B.**); 3 N.L.R. 53=5 Cr. L.J. 435; 12 C.P.L.R. 10 noted under S. 4, *supra*. **B**

(2) **Possession of arms other than those mentioned in the section.**

The possession of arms other than those mentioned in this section is not prohibited in places where S. 32, Cl. (2) of Act XXXI of 1860 (repealed by S. 3, *supra*) has not been extended under S. 15, *infra*. L.B.R. (1872—1892) 426, 536 and 1 Weir 666; also see 9 B. 478; 5 M. 26. **C**

(3) **What constitutes possession.**

When the arms concealed were found in a search under S. 25, *infra*, in a place which though legally, the joint family property of the accused and his brother, yet was in the exclusive possession of the accused, the accused can properly be held to be in possession of those arms and convicted accordingly. 28 A. 302=3 A.L.J. 833=(1906) A.W.N. 11 =3 Cr. L.J. 88. **D**

(4) **Mere temporary possession—Not punishable.**

The temporary possession of a gun by a person when he snatches it up to fire at a mad dog which has entered his premises is not such a possession as is contemplated by this section. 35 C. 219=7 C.L.J. 242=12 C. W.N. 272=1 Cr. L. J. 112=3 M.L.T. 190. See, also, 16 A. 276. **E**

(5) **Possession by a member of a joint Hindu family—Amount of proof.**

When arms are found in a house occupied by a joint Hindu family, and where it is sought to establish that possession and control are with some member of the family other than the managing member, there must be good and clear evidence of the fact. This Act is a highly penal one and must be strictly construed. 15 A. 129=(1893) A.W.N. 48. **F**

2.—"Except under....thereby."

(1) **Exemption of 'reservists' from the operation of this section.**

By the orders of the Government of India, the term soldiers includes 'reservists' and as soldiers in the service of the British Government are exempted from certain provisions of this section and S. 13, *supra*, as well as those of Ss. 15 & 16, *infra*, a reservist cannot be prosecuted for being in possession of a double-barrelled gun without a license. 1 P.R. (1902) (Cr.) **G**

(2) **Exemption of Volunteers from the operation of the section.**

A volunteer can have in his possession fire-arms, ammunition etc., as he is exempted from the operation of this section by the Government of India, notification No. 458 of the 18th March 1898. The exemption is not limited to the possession of fire-arms etc., for the purposes of volunteering and military purposes merely but extends to the possession of fire-arms for the purpose of private use also. 20 A.W.N. 92=22 A. 323. **H**

(3) **Exemption of the commissioned officers of the Native army.**

The commissioned officers of the native army are exempted from the prohibitions contained in this section and S. 15, *infra*. A person, who is not a commissioned officer at the date of the offence but subsequently promoted to that grade with retrospective effect is equally protected, the fact of the order promoting him being of a later date notwithstanding. 27 P.R. (1885) (Cr.) **I**

N.B.—The last three paragraphs of this section have been repealed by Act XII of 1891.

Possession of arms of any description without license prohibited in certain places.

15. In any place to which section 32, clause 2, of Act No. XXXI of 1860 applies at the time this Act comes into force or to which the Local Government, with the previous sanction of the Governor General in Council, may by notification in the local official Gazette specially extend this section, no person shall have in his possession any arms of any description, except under a license and in the manner and to the extent permitted thereby.

(Notes).

General.

N.B.—For cases under this section, see 9 B. 478; 1 Weir 666; 5 M. 26; L.B.R. (1872—92) 426, 536; 1 P.R. (1902) & 27 P.R. (1885) noted under S. 14, *supra*. **J**

(1) **Section extended to what places.**

(*a*) MADRAS PRESIDENCY.

Calicut, Ernad, Walavanad, Ponnani. (See G.O. No. 260, 30th June, 1885: G. O. No. 355, 6th Feb. 1885). **K**

(*b*) BOMBAY PRESIDENCY.

Aden. (See Notification. No. 3467, 16th Jan. 1879). **L**

General—(*Concluded*).

(2) **Re-publication of Govt. Notification No. 1112, 19th Feb. 1878, with additions.**

The Governor in Council is pleased to re-publish the Government Notification, No. 1112, 19th Feb. 1878, with the addition attached to it by Government Resolution No. 4378, 13th Aug. 1890.

It is hereby notified, for general information, that the provisions of Act XXXI of 1860 (relating to the manufacture, importation and sale of arms, and ammunition, and for regulating the right to keep and use the same, and to give the power of disarming in certain cases) as modified by Act VI of 1866, are in force in the following places, districts and portions of districts :—Town and Island of Bombay.

District of: Ratnagiri, Poona, Ahmednagar, Satara, Belgaum, Dharwar, District of Sholapur in the following taluqs only :—I. Pandarpur. II Sangola.

District of Kaladgi, in the following taluqs only :—I. Bijapur, II. Bagalkot. III. Badami, IV. Hungund.

Canara, in the following taluqs only :—I. Supa, II. Yellapur, III. Karwar. IV. Sarsi. V. Siddapur.

Nasik in the following taluqs only :—I. Nasik. II. Igatpuri. III. Dindori. IV. Sinnar. V. Niphad, VI. Yeola. VII. Chandor.

And that the provisions of Act XXXI of 1860, as modified by Act VI of 1866 are, with the exception of several clauses of S. 32 which apply to the disarmament of any District, in force, in the following Districts and portions of Districts.

The Province of Sindh :—The Districts of Karachi, Hyderabad and Shikarpur, Thar and Parkar and the Upper Sindh Frontier.

District of :—Ahmedabad, Surat, Broach, Kaira, Panch Mahals, Thana. Kolaba.

District of Nasik in the following taluks only :—
I. Malegaon. II. Nandgaon, III. Baglan. IV. Kalvan.

District of Kanara in the following taluks only :—
I. Kumta. II. Konawar.

District of Kaladgi in the following taluks only :—
I. Indi. II. Sindgi. III. Muddebahal. IV. Bagevadi.

District of Sholapur in the following taluks only.
I. Sholapur. II. Barsi, III, Madha. IV. Karmala.

(See Notification. No. 391, dated 18th June, 1893).

Peint Taluka in the District of Nasik. (See Notification. No. 8225, 12th Dec. 1898),

The Punjab :—Hazara, Peshawar, Kohat, Bannu, Dera-Ismail-Khan and Dera Ghazi Khan Districts. (See Notification. No. 1635, 16th Nov. 1900).

M to Q

Arms of which possession has become unlawful to be deposited at police-station.

16. Any person possessing arms, ammunition or military stores, the possession whereof by him has, in consequence of the cancellation or expiry of a license or by the issue of a notification under section 15, become unlawful, shall deposit the same without unnecessary delay with the officer in charge of the nearest police-station.

If the owner of anything deposited under this section does not within three years from the date on which such thing is so deposited produce a license authorizing him to possess the same and apply for delivery of the same, such thing shall be forfeited to His Majesty.

V.—Licenses.

Power to make rules as to licenses.

17. The Governor General in Council may from time to time, by notification in the Gazette of India, make rules to determine the officers by whom, the form in which, and the terms and conditions on and subject to which, any license shall be granted; and may by such rules among other matters—

(*a*) fix the period for which such license shall continue in force;

(*b*) fix a fee payable by stamp or otherwise in respect of any such license granted in a place to which section 32, clause 2, of Act No. XXXI of 1860 applies at the time this Act comes into force, or in respect of any such license other than a license for possession granted in any other place;

(*c*) direct that the holder of any such license other than a license for possession shall keep a record or account, in such form as the Local Government may prescribe, of anything done under such license, and exhibit such record or account when called upon by an officer of Government to do so;

(*d*) empower any officer of Government to enter and inspect any premises in which arms, ammunition or military stores are manufactured or kept by any person holding a license of the description referred to in section 5 or section 6;

(*e*) direct that any such person shall exhibit the entire stock of arms, ammunition and military stores in his possession or under his control to any officer of Government so empowered; and

(*f*) require the person holding any license or acting under any license to produce the same, and to produce or account for the arms, ammunition or military stores covered by the same when called upon by an officer of Government so to do.

(Note).

1.—"Licenses."

When granting licenses, the District Magistrate is not a Court.

When receiving applications for licenses under the Arms Act, the District Magistrate is not acting as a Criminal Court. Consequently, he is not empowered to impose a fine under sub-sec. (3), S. 8 of the Central Provinces Courts Act (1904) on an applicant for license. 4 N.L.R. 134. **R**

Cancelling and suspension of license 1.

18. Any license may be cancelled or suspended—

(*a*) by the officer by whom the same was granted, or by any authority to which he may be subordinate, or by any Magistrate of a District, or Commissioner of Police in a Presidency town, within the local limits of whose jurisdiction the holder of such license may be, when, for reasons to be recorded in writing, such officer, authority, Magistrate or Commissioner deems it necessary for the security of the public peace to cancel or suspend such license ; or

(*b*) by any Judge or Magistrate before whom the holder of such license is convicted of an offence against this Act, or against the rules made under this Act ; and

the Local Government may at its discretion, by a notification in the local official Gazette, cancel or suspend all or any licenses throughout the whole or any portion of the territories under its administration.

(Note)

1.—"Cancellation and suspension of license."

Cancellation and suspension of license in the District of Bakargunge—Bengal Government Notification No. 4772-J, 22nd Aug. 1896.

Whereas numerous murders by gun shot have been committed in the District of Bakargunge, and it is deemed necessary for the suppression of such crime that the possession and use of fire-arms in the District should not be permitted, the Lieutenant-Governor under the authority vested in him by this section, hereby notifies that all licenses now held in the District under Ss. 5, 13 and 14 of this Act are cancelled with effect from the 1st Sept. 1896. The Magistrate of the District will allow to the holders of licenses such time as may be necessary for the deposit of their arms with the Officer in charge of the nearest Police Station.

Arrangements will be made whereby the collecting members of Chowkidari Punchayets will be supplied with guns for use where they may be needed for protection against wild animals. **R1**

VI.—Penalties.

For breach of sections 5, 6, 10, 13 to 17.

[1] **19.** Whoever commits any of the following offences (namely) :—

(*a*) manufactures, converts or sells, or keeps, offers or exposes for sale, any arms, ammunition or military stores in contravention of the provisions of section 5 [2];

(*b*) fails to give notice as required by the same section ;

(*c*) imports or exports any arms, ammunition or military stores in contravention of the provisions of section 6 ;

(*d*) transports any arms, ammunition or military stores in contravention of a regulation or prohibition issued under section 10 ;

(*e*) [3] goes armed in contravention of the provisions of section 13 ;

(*f*) has in his possession or under his control any arms, ammunition or military stores in contravention of the provisions of section 14 or section 15 [4];

(*g*) intentionally makes any false entry in a record or account which, by a rule made under section 17, clause (*c*), he is required to keep ;

(*h*) intentionally fails to exhibit anything which, by a rule made under section 17, clause (*c*), he is required to exhibit ; or

(*i*) fails to deposit arms, ammunition or military stores, as required by section 14 or section 16 ;

shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

(Notes).

1.—"Section 19."

Offences under this section.

——are liable. (See Sch. II, Cr.P.C. 1898). **S**

2.—"Manufactures....section 5."

N. B.——As to what is in contravention of the provisions of S. 5, see cases noted under S. 5, *supra*. **T**

Sale by agent of license-holder.

There is nothing in this Act or the rules, which renders a sale of sulphur and ammunition by the Agent of a license holder illegal. 12 M. 473=1 Weir 655. See, also, L. B. R. (1872—1892), 168. **U**

3.—"Goes armed....13."

(1) **Going armed.**

As to what constitues———, see cases noted under S. 13, *supra.* **V**

(2) **Person carrying arms—Presumption.**

A man who is found going about with a pistol gun, sword or other weapon within the definition of "arms" in S. 4 of the Act, must, in the absence of proof to the contrary. be presumed to be carrying it with the intention of using it, should an opportunity for using it arise, and, unless he is licensed to carry the weapon, and is not exceeding the terms of the license, he may be properly convicted under S. 19 (*e*) of the Act. 15 A. 27. **W**

(3) **Exemption for personal use—Servant not exempted.**

The Home Department Notification No. 518 of 6th March 1879, as amended by Notification No. 458 dated 18th March 1898, grants exemptions to persons on whom titles are conferred by Government. This exemption extends to the title-holders themselves and not to their servants, even though the servant be engaged in doing his master's work. 14 C. P. L. R. 112. **X**

(4) **Spear exempted.**

The carrying of a spear is not an offence under S. 19 (*e*) of the Arms Act. Rat. Un. Cr. C. 507. **Y**

4.—"Has in his possession....15."

(5) **Mere temporary possession.**

(*a*) The—without a license, of arms for purposes other than their use as such, is not an offence within the meaning of section. The above principle is not confined to the case of a servant carrying his master's gun, but applies also to a friend performing the same office to a friend. The essence of the offence is the going armed. 24 A. 454. **Z**

(*b*) When a person who apparently had a license to go armed had come to a village wherein his cousin's servant was, to shoot and feeling thirsty, went to get a drink, leaving the gun with the servant, *held*, that such a temporary custody of the gun by the servant did not amount to his "possession," or control contemplated by S. 19 (*f*). 4 N.L.R. 141; 16 A. 276. **A**

(*c*) The provisions of S. 19 (*f*) do not make the mere possession of a gun punishable; they make possession contrary to the provisions of S. 14, *supra.* 35 C. 219 (220) = 7 C.L.J. 242 = 12 C.W.N. 272 = 1 Cr. L. J. 112 = 3 M.L.T. 190: 5 L.B.R. 83. **B**

(2) **Reservist.**

The possession of a gun by a—does not constitute any offence against the Arms Act. 1 P.R. 1902 = 3 P.L.R. 13. **C**

(3) **Volunteer.**

A—being a person exempted in virtue of notification No. 458, dated 18th March 1898, of the Government of India, can legally keep and use fire-arms even for purposes having no reference to his duty as a volunteer (*e. g.*, for protecting his cultivation). 22 A. 323 = A.W.N. 1900, 92. **D**

4.—"Has in his possession....15"—(Continued).

(4) **Arms Act, Ss. 19, 27—Exemption from provision in case of certain class of persons—Government of India Notification 518 of 1879 and 458 of 1898—Arms carried by servant of exempted person.**

(*a*) By Government of India Notification Nos. 518 of 1879 and 458 of 1898, framed under the provisions of S. 27, *infra*, certain classes of persons are exempted from the operation of the prohibitions and directions contained in Ss. 13—16, *supra*, "subject to the proviso that in the arms and ammunitions carried or possessed by such persons shall be for their own personal use etc., etc." *Held*, that the servant of a master so exempted was not liable to be convicted under this section for being found carrying a gun and ammunition and using them for shooting games for his master, as the use of the arms by the servant for that purpose should be considered to be within the meaning of the words "personal use." 22 A 118. **But** see 13 C.W.N. 394. **E**

(*b*) Where the accused, as servant was found using a gun which was lent to him by his master who held a license for the gun for his own purpose, *held*, that the act of the accused was an infringement of the provisions of S. 19, cl. (*f*) of this Act. 13 C.W.N. 394. (**But** see 3 C.W.N. 394 ; 35 C. 219 ; 22 A. 118). **F**

(5) **Arms found in a common room of a house occupied by a father and son—Possession of or control over.**

In a prosecution under this section, the accused was charged with being in possession of a dagger which was found in a cloth or inside a basket in one of the rooms of his house. It appeared that room and house were jointly occupied by the accused and his son, and the prosecution failed to prove that the dagger was in the exclusive possession and control of the accused or that he was the owner. *Held*, that the accused was, under the circumstances not guilty of any offence under the Arms Act. 52 P.R. 1905 (Cr.) = 2 P.L.R. 240. **G**

(6) **Arms without license collected for worship in temple.**

There is nothing in the Arms Act, to except the custodian of a temple, which had a collection of fire-arms used as objects of worship, from complying with the requirements of the Act either by taking out a license or obtaining exemption under S. 27, *infra*, so that a conviction under S. 19 (*f*), for neglect to take out license in respect of such arms is not illegal. 8 C. 473. **H**

(7) **Possession of revolver out of repair without a license.**

——is an offence under this section. 6 P.R. 1908 (Cr.). **H1**

(8) **Order extending time for renewal of license—Effect.**

An order extending the time of a renewal of license has the effect of keeping a license previously granted in force : and a person cannot be convicted of an offence under S. 19 (*f*) of this Act for a breach of its provisions within the extended time. 3 C.W.N. 394. **I**

(9) **Having in possession on control arms and ammunition without license.**

Where, on a search made by a Magistrate with a number of Police Officers into the house of the accused person, who, after his license for possession of arms and ammunitions had been cancelled, was suspected of being

4.—"Has in his possession....15"—(Concluded).

in possession of them and who was, preliminarily to the search, arrested some arms and ammunitions were found on the premises, and the accused, was committed to the Sessions and convicted of offences under Ss. 19 and 20 of the Arms Act, *held*, that the conviction under S. 20 of the Act was not legal, but that the accused should be taken to have had, in his possession or under his control, arms and ammunitions, as defined by this Act, within the meaning of sub-S. (*f*) of S. 19, and therefore the conviction under that section should be confirmed. 27 C. 692=4 C.W.N. 750. **J**

(10) **Saltpetre in the Khandesh District.**

As Khandesh is neither a district on the external land frontier of British India nor a sea-board district of British Burma, Cl. IV of the Notification of the Government of India, No. 578 of 6th March 1879, has no application to it and as the Government of India has not yet, by any other notification, extended S. 19 of the Act to Saltpetre in the Khandesh district, a person cannot be convicted under S. 19 of the Arms Act, for keeping saltpetre without a license. Rat. Un. Cr. C. 227. **K**

(11) **Possession of gun powder without a license.**

A person in—is liable to be convicted under this section, although he may intend to employ the powder in the manufacture of fire works or other harmless purposes, inasmuch as gunpowder is a material capable of being used for purposes of warfare. 8 M. 202=1 Weir 664 (665). **L**

N.B.—For further cases, see notes under Ss. 13, 14, 15, *supra*.

For secret breaches of sections 5, 6, 10, 14 and 15.

20. Whoever does any act mentioned in clause (*a*), (*c*), (*d*) or (*f*) of section 19, in such manner as to indicate an intention that such act may not be known to any public servant as defined in the Indian Penal Code, or to any person employed upon a railway or to the servant of any public carrier [1],

For concealing arms, etc.

and whoever, on any search being made under section 25, conceals or attempts to conceal any arms, ammunition or military stores [2], shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

(Notes).

1.—"Whoever does....public carrier."

Offence under the first para of this section—Sanction—Whether necessary.

To sustain a conviction under the first paragraph of this section for the secret breach of S. 14, *supra*, sanction of the District Magistrate is necessary under S. 29, *infra*, for S. 19, *supra*, and this section are so interwoven that it is difficult to see how an offence can be committed under the first paragraph of this section unless an offence under one of the enumerated sub-sections of S. 19 has also been committed. 27 C. 692=4 C.W.N. 750. **M**

2.—"And whoever on any search....military stores."

(1) **Concealment—What amounts to.**

The words 'conceals or attempts to conceal' in the second paragraph of this section must be read with what precedes, namely, that the concealment or attempt at concealment was made on a search being made under S. 25, *infra*. This obviously does not mean that a mere denial to a police officer making a search of any arms being in the house is equivalent to concealment or attempt at concealment. There must be some overt act of concealment or attempt at concealment with a view to prevent the discovery of arms searched for. 28 A. 302=3 A.L.J. 833=A.W.N. (1906) 11=3 Cr.L.J. 88. **N**

(2) **Concealment of fire-arms—under heap of straw.**

Where certain fire-arms had been found from the possession of the accused, who had concealed them under a heap of straw, in order that visitors in his house should not see them held, that the concealment was not with the intention specified in S. 20, and the accused could, therefore, be convicted only under S. 19, cl. (*f*) of the Arms Act. 9 Cr.L.J. 259 (**F.B.**)=1 S.L.R. 18 (Cr.). **O**

For breach of license.

21. Whoever, in violation of a condition subject to which a license has been granted, does or omits to do any act shall, when the doing or omitting to do such act is not punishable under section 19 or section 20, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

For knowingly purchasing arms, etc., from unlicensed person.

22. Whoever knowingly purchases any arms, ammunition or military stores from any person not licensed or authorised under the proviso to section 5, to sell the same ; or

For delivering arms, etc., to person not authorized to possess them.

delivers any arms, ammunition or military stores into the possession of any person without previously ascertaining that such person is legally authorized to possess the same [1] ;

shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(Notes).

1.—"Delivers any arms....same."

(1) **Rifle—Delivery into the custody of servant not authorised to possess—Whether amounts to delivery into possession—Conviction under S. 22—Maintainability.**

(i) The delivery into possession contemplated by S. 22 of the Arms Act is such a delivery as gives the person into whose possession the arm is delivered control over the arm and authority to use it as an arm. 5 L.B.R. 83. **P**

I.—" Delivers any arms....same "—(Concluded).

(ii) A and his servant N, while out on a shooting excursion, came across a deer recently killed by a tiger. A fixed his rifle over the killed deer so as to form a trap for the tiger and went home leaving the trap in charge of N. A was charged under S. 22 of the Arms Act, with having delivered the rifle into the possession of an unauthorised person. *Held* that A cannot be convicted for an offence under S. 22. (*Ibid.*)Q

(2) **Master liable to acts of servant under this section.**

When the agent of the shop of a licensed vendor of arms, ammunition and military stores sold certain arms to a person without previously ascertaining that such person is legally authorized to possess the same, the licensed vendor will be liable under this section, though the sale might have taken place without his knowledge and consent. Any other conclusion would render the Act ineffective for its avowed purposes. 24 B. 423=2 Bom. L.R. 52. R

(3) **Sale by the agent of the authorized person.**

A person licensed to sell arms need not sell them personally himself but may authorize any third person to sell. L.B.R. (1872—1892), p. 168. S

(4) **What amounts to transfer of possession under this section.**

The transfer of possession contemplated by this section is something more than the entrusting of an arm to a servant. A servant using a gun belonging to his master for his master's purposes has got the 'control' of the gun but is not in 'possession' of it. It is possible that the servant commits an offence against S. 13, *supra* and the master abets it. 4 N.L R. 78=8 Cr.L.J. 18. T

(5) **Delivery for mere temporary possession—Not punishable.**

The delivery of arms for a mere temporary possession and not for its use as such, as for instance, when the master delivers his gun to his servant to carry or gives it to a black-smith for repairs, does not come within the scope of this section. 16 A. 276. U

Penalty for breach of rule.

23. Any person violating any rule made under this Act, and for the violation of which no penalty is provided by this Act, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Power to confiscate.

24. When any person is convicted of an offence punishable under this Act, committed by him in respect of any arms, ammunition or military stores, it shall be in the discretion of the convicting Court or Magistrate further to direct that the whole or any portion of such arms, ammunition or military stores, and any vessel, cart or baggage-animal used to convey the same, and any box, package or bale in which the same may have been concealed, together with the other contents of such box, package or bale shall be confiscated [1].

(Notes).

I.—" It shall be in.... confiscated."

(1) **Order for confiscation can be passed only on conviction.**

The order for confiscation is in addition to any sentence that may be passed. Therefore, without the sentence, an order for confiscation cannot be passed. 1 Weir 654. **Y**

(2) **Articles which are mere curiosities.**

Articles which are not arms at all but are mere curiosities, are not liable to confiscation under the Act. (See Bom. Govt. Notn. 6205, 9th Sept., 1880). **W**

(3) **Discretionary power of confiscating arms to be considerately used.**

(i) The discretionary power of confiscating arms conferred by this section should be very considerately used. (See U.P.G.O. No. 454-VI— 989, 14th March 1887). **X**

(ii) A mere breach of license is not ordinarily an adequate reason for confiscation. (*Ibid.*) **X1**

(iii) Junior Magistrates should usually refer the question of the necessity for confiscation to the Magistrate of the District for decision. (*Ibid.*) **X2**

VII.—Miscellaneous.

Search and seizure by Magistrate.

25. Whenever any Magistrate has reason to believe that any person residing within the local limits of his jurisdiction has in his possession any arms, ammunition or military stores for any unlawful purpose, or that such person cannot be left in the possession of any such arms, ammunition or military stores without danger to the public peace,

such Magistrate, having first recorded the grounds of his belief [1], may cause a search to be made of the house or premises [2] occupied by such person or in which such Magistrate has reason to believe such arms, ammunition or military stores are or is to be found, and may seize and detain the same, although covered by a license, in safe custody for such time as he thinks necessary.

The search in such case shall be conducted by, or in the presence of, a Magistrate, or by, or in the presence of, some officer specially empowered [3] in this behalf by name or in virtue of his office by the Local Government.

(Notes).

I.—"Having first recorded.... belief."

Recording grounds of belief, whether essential.

(i) Unless a search is warranted by some Statute, a Magistrate has no right to make it. 36 C. 433=9 C.L.J 298=13 C.W.N. 458=5 M.L.T. 367. **Y**

(ii) A special and drastic power is granted to the Magistrate by S. 25 of the Indian Arms Act. (*Ibid.*) **Y1**

1.—"Having first recorded....belief"—(Concluded).

(iii) That section directs that a Magistrate, under certain circumstances and "having first recorded the grounds of his belief" may cause a search to be made etc. (*Ibid.*) **Y2**

(iv) These words must have been inserted with an object and the object probably was to protect the public against searches being inconsiderately directed and to ensure the exercise of deliberation by the Magistrate before he ordered the search. (*Ibid.*) **Y3**

(v) When the Statute has created a special right, but certain formalities have to be complied with antecedent to the exercise of that right, a strict observance of the formalities is essential to the acquisition of that right. (*Ibid.*) **Y4**

(2) **Grounds for issuing search-warrants—To be recorded.**

Before search-warrants are issued under the provisions of this section, the Magistrate should place on record the grounds of his belief that there are in the house, which it is proposed to search, weapons kept for an unlawful purpose. 15 A. 129. **Z**

(3) **Omission to record reasons for the search—Effect.**

If he does not so record his reasons, and if the search turns out to be unwarranted and fruitless, he will be liable in damages at the instance of the person whose house was searched. 8 C.L.J. 75=12 C.W.N. 973=13 C.W.N. 458. **A**

2.—"May cause....house or premises."

(1) **Search-warrants, in what cases to be issued.**

This section refers to cases in which the Magistrate considers that arms whether under a license or not are possessed for an 'illegal purpose' or under circumstances such as to endanger the public peace. So, a search-warrant cannot be issued for the sake of searching a temple where arms are kept for the purposes of interest or worship. 8 C. 473. **B**

(2) **Search by night.**

S. 25 provides for special cases and does not override S. 165 Cr. P. C. Search by night is not illegal and in cases under the Arms Act is not restricted to the procedure laid down. in S. 25. 4 P.L.R. 481. **C**

3.—"Or by or in the....empowered."

(1) **Presence at the search of a specially empowered officer—Necessary.**

This section contemplates the presence of some specially empowered officer at a search, besides the officer conducting the search. Even when the search is under the Code of Criminal Procedure. when proceedings are instituted under S. 19 (*f*) *supra*, the presence of an officer specially empowered is necessary. (S. 30, *infra*.) 8 C. 473. **D**

(2) **The question whether a search is under this Act or the Cr. P. C.—How to be decided.**

When there are special provisions in an Act of the Legislature dealing with the case of a search for arms and laying down what are the conditions precedent to making such a search and there are general provisions in another Act of the Legislature dealing with searches generally, and in point of fact, the search was one made for arms, it ought,—in the

3.—"Or by or in the....empowered"—(Concluded).

absence of evidence to show that the search was made under the general as opposed to the specific Legislation—to be taken that the search was not made under the general provisions authorizing searches, and especially so, when the search was made by one who, in the circumstances, had no power of search under the general provisions relating to searches. *Maclean, C. J.* in 13 C.W.N 458=36 C. 433= 9 C.L.J. 298=5 M.L.T. 367, **E**

(3) **Officers empowered under the section to conduct searches.**

(*a*) BENGAL.

Police-Officers not below the grade of an Inspector. (See Notn. 24th March, 1879). **F**

(*b*) BURMA.

All District Superintendents, Assistant Superintendents, Deputy Superintendents, and Inspectors of Police. (See Notn. No. 113, 5th Aug. 1909). **G**

(*c*) THE CENTRAL PROVINCES.

All Police-Officers not below the rank of Sub-Inspector. (See Notn. No. 8126, 6th Nov. 1893). **H**

(*d*) THE PUNJAB.

All Police Officers not below the rank of Officer in charge of a Station. (See Notn. No. 943, 10th July, 1907). **I**

(*e*) THE UNITED PROVINCES

Justices of the Peace, District Superintendents, Assistant Superintendents, Deputy Superintendents and Inspectors of Police. (See G.O. No. 3264-VI-660-D-2, 9th Nov. 1907). **J**

Seizure and detention by Local Government.

26. The Local Government may at any time order or cause to be seized any arms, ammunition or military stores in the possession of any person, notwithstanding that such person is licensed to possess the same, and may detain the same for such time as it thinks necessary for the public safety.

Power to exempt.

27. The Governor General in Council may from time to time, by notification, published in the Gazette of India,—

(*a*) exempt any person by name or in virtue of his office, or any class of persons, or exclude any description of arms or ammunition, or withdraw any part of British India, from the operation of any prohibition or direction contained in this Act ; and,

(*b*) cancel any such notification, and again subject the persons or things or the part of British India comprised therein to the operation of such prohibition or direction.

(Notes).

General.

Powers of Governor-General-in-Council—Restriction.

There is no provision of law or any rule having the force of law whereby the Army Regulations, India. can be held legally to restrict the powers exercised by the Governor General in Council under S. 27. 3 P.L.R. 13=1 P.R. 1903 (Cr). K

1.—" The Governor-General....exempt."

(1) **Notification under the section—Exemption for 'personal use'—Meaning of.**

When a notification under this section exempts certain persons from the operation of Ss. 13 & 16, *supra* by allowing them to carry arms for their personal use, the exemption is not limited to their carrying arms personally themselves but extends to their retainers carrying arms for their use and purposes. 22 A. 118. L

(2) **Custodians of the temple where arms are kept must take out license unless exempted.**

See 8 C. 473 under S. 19, *supra*. M

Information to be given regarding offences.

28. Every person aware of the commission of any offence punishable under this Act shall in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information of the same to the nearest Police-officer or Magistrate, and

every person employed upon any railway or by any public carrier shall, in the absence of reasonable excuse, the burden of proving which shall lie upon such person, give information to the nearest Police-officer regarding any box, package or bale in transit which he may have reason to suspect contains arms, ammunition or military stores in respect of which an offence against this Act has been or is being committed.

Sanction required to certain proceedings under section 19, clause (*f*).

29. Where an offence punishable under section 19, clause (*f*), has been committed within three months from the date on which this Act comes into force in any province, district or place to which section 32, clause 2 of Act XXXI of 1860 applies at such date, or where such an offence has been committed in any part of British India not being such a district, province or place, no proceedings shall be instituted against any person in respect of such offence without the previous sanction of Magistrate of the District or, in a Presidency town, of the Commissioner of Police[1].

(Notes).

1.—"No proceedings....Commissioner of Police."

(1) **Want of sanction before instituting proceedings—Effect of.**

(*a*) When, in a prosecution for an offence under S. 19, cl. (*f*) *supra*, sanction was obtained after the framing of the charge; the proceedings would not be set aside on account of the sanction not being obtained before the institution of proceedings if the accused had not been prejudiced thereby. 4 L.B.R. 247=8 Cr. L.J. 65. **N**

(*b*) S. 32, cl. (2) of Act XXXI of 1860 has not been extended to Lower Burma; so, no prosecution under S. 19, cl. (*f*) *supra*, can be instituted in Lower Burma except with the sanction of the District Magistrate; but the proceedings will not be set aside unless a failure of justice has been caused. L.B.R. (1872-92), 426, 536; **but** see 5 M. 28 & 5 M.L.T. 162. **O**

(*c*) A conviction under S. 19 (*f*) *supra*, when sanction has not been obtained previous to commitment is bad in law. Such an irregularity cannot be cured either by S. 532 or S. 537 of the Code of Criminal Procedure. 5 M.L.T. 162. **P**

(*d*) To sustain a conviction under S. 19, (*f*), *supra*, the sanction of the District Magistrate is necessary for the institution of proceedings. A conviction where no such sanction has been obtained will be set aside. 5 M; 26; 1 Weir 663, L.B.R. (1872-92) 426, 536, 27 C. 692=4 C.W.N. 750. **Q**

Searches in the case of offences against section 19, clause (*f*), how conducted.

30. Where a search is to be made under the Code of Criminal Procedure or the Presidency Magistrates Act, 1877, in the course of any proceedings instituted in respect of an offence punishable under section 19, clause (*f*), such search shall, notwithstanding anything contained in the said Code or Act, be made in the presence of some officer specially appointed by name or in virtue of his office by the Local Government in this behalf [1], and not otherwise.

(Notes).

N.B.—Act X of 1882 & Act IV of 1877 are now replaced by Act V of 1898, Cr. P.C.

1.—"Some Officer specially appointed....in this behalf."

(1) **Officers in whose presence searches in respect of an offence under section 19 (*f*) may e made.**

MADRAS PRESIDENCY.

I. In the Madras Presidency searches in respect of an offence punishable under S. 19 (*f*) may be made in the presence of a Magistrate or an Inspector, or a Sub-Inspector of Police or of a head of a village. (See Notes. Nos. 384 & 132, 31st Aug. 1883, & 14th March, 1885). **R**

II. In the taluks of Calicut, Yernaud, and Wallavanad, Malabar District, searches in respect of offences punishable under S. 19 (*f*) may be made in the presence of a Magistrate, an Inspector, or Sub-Inspector of Police, Station House Officer, or of a head of a village. (*Ibid*). **R1**

(2) **Searches in other Provinces under this section, made in presence of whom.**

(*a*) BENGAL.

Magistrate or a Police Officer not below the grade of Inspector. (See Notn. 15th Aug. 1879). **S**

1.—"Some Officer specially appointed....in this behalf"—(Concluded).

(b) BURMA.

Magistrates, District Superintendents, Assistant Superintendents, Deputy Superintendents, and Inspectors of Police in Burma and Sub-Inspectors of Police within the Kyanktaw, Panagyun, Mindya, Buthidaung and Maungdaw, townships of the Akyab District. (See Notn. No. 114, dated 5th Aug. 1909). **T**

(c) CENTRAL PROVINCES.

Magistrates and Police-Officers not below the rank of Sub-Inspector.....(See Notn. No. 8106, 6th Nov. 1893). **U**

(d) THE PUNJAB.

Police-Officers of a rank not below that of Officer in charge of a Station. (See Notn. No. 943, 10th July, 1907). **V**

(e) THE UNITED PROVINCES.

Magistrates, Justices of the Peace, District Superintendents, Assistant Superintendents, Deputy Superintendents, Inspectors, Officers in charge of reporting stations. (See U.P.G.O. No. 3386, 16th Nov. 1907). **W**

Operation of other laws not barred.

31. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made under it, or from being liable under such other law to any higher punishment or penalty than that provided by this act: Provided that no person shall be punished twice for the same offence.

Power to take census of fire arms.

32. The Local Government may from time to time, by notification in the local official Gazette, direct a census to be taken of all fire-arms in any local area, and empower any person by name or in virtue of his office to take such census.

On the issue of any such notification, all persons possessing any such arms in such area shall furnish to the person so empowered such information as he may require in reference thereto, and shall produce such arms to him if he so requires.

Any person refusing or neglecting to produce any such arms when so required shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Notice and limitation of proceedings.

33. No proceeding other than a suit shall be commenced against any person for anything done in pursuance of this Act, without having given him at least one month's previous notice in writing of the intended proceeding and of the cause thereof, nor after the expiration of three months from the accrual of such cause.

THE FIRST SCHEDULE.

ENACTMENTS REPEALED.

(See section 3.)

Number and year.	Title.	Extent of Repeal.
XVIII of 1841 ...	An Act for consolidating and amending the enactments concerning the exportation of Military Stores.	So much as has not been repealed.
XXX of 1854 ...	An Act to provide for the levy of duties of Customs in the Arracan, Pegu, Martaban and Tenasserim Provinces.	In the preamble, the words "and that the exportation of ammunitions of war from any of these Provinces into foreign States should be prohibited." Section 11.
XXI of 1860 ...	An Act relating to the manufacture, importation and sale of Arms and Ammunition, and for regulating the right to keep and use the same, and to give power of disarming in certain cases.	So much as has not been repealed.
VI of 1866 ...	An Act to continue Act No. XXXI of 1860 (relating to the manufacture, importation and sale of Arms and Ammunition, and for regulating the right to keep and use the same and to give power of disarming in certain cases) and for other purposes.	The whole.
III of 1872 ...	The Santhal Parganas Settlement Regulation.	So much of the schedule as relates to Act XXXI of 1860 and Act VI of 1866.
IX of 1874 ...	The Arakan Hills District Laws Regulation, 1874.	So much of the schedule as relates to Act XVIII of 1841.
XV of 1874 ...	An Act for declaring the local extent of certain enactments and for other purposes.	So much of the first schedule as relates to Act XVIII of 1841.

THE SECOND SCHEDULE.

ARMS, ETC., LIABLE TO DUTY.

[*Repealed by Act XII of 1891.*]

APPENDICES.

A. THE INDIAN ARMS RULES, 1909.

B. RULES AND ORDERS *RE* THE GRANT OF SHOOTING PASSES.

C. RULES FOR THE ACQUISITION, POSSESSION AND SALE OF RIFLES.

D. EXTRACT FROM THE INDIAN TARIFF ACT, 1894.

(Schedule II, Act VIII of 1894).

APPENDIX A.

The following extract from the *Gazette of India*, is published for general information:—

GOVERNMENT OF INDIA.

HOME DEPARTMENT.

PUBLIC.

RESOLUTION—By the Government of India, Home Department, Nos. 3052—3101, dated Simla, the 16th August 1909.

The Rules issued under the Indian Arms Act, 1878, were originally published with the Home Department Notification No. 518, dated the 6th March 1879. As the result of successive amendments and additions during the past thirty years, these rules have become most intricate and confusing, and it is believed that in their present form they cause inconvenience to the officers who have to administer them as well as to the public, especially to those who are connected with the trade in arms and ammunition. The Governor General in Council has therefore caused them to be codified in a clearer form. The revised rules have been circulated to local Governments and Administrations for their opinions; and a large number of minor amendments suggested by them have been adopted. The rules as finally approved by the Governor General in Council are now published for general information, in supersession of those hitherto in force. The changes which have been made in the rules are, for the most part, only such as are necessary in order to make them clear or in consequence of administrative changes, such as the formation of the North-West Frontier Province, the creation of new districts in the Punjab and the formation of the province of Eastern Bengal and Assam.

GOVERNMENT OF INDIA.

HOME DEPARTMENT.

NOTIFICATION.

PUBLIC.

Simla, the 16th August, 1909.

No. 3102.—In exercise of the powers conferred by sections 4, 10, 11, 17 and 27 of the Indian Arms Act, 1878 (XI of 1878), and in supersession of all previous Notifications on the same subject, the Governor General in Council is pleased to make the subjoined rules relating to arms, ammunition and military stores:

Provided that all exemptions, exclusions or withdrawals made, all licenses or duplicates granted or renewed, all fees imposed, levied, remitted or reduced and all powers conferred by or under any Notification, hereby superseded, and in force at the commencement of this Notification, shall, so far as they are consistent herewith, be deemed to have been respectively made, granted, renewed, imposed, levied, remitted, reduced or conferred hereunder.

THE INDIAN ARMS RULES, 1909.

CONTENTS.

RULES.

1. Short title.
2. Interpretation.

Application of the Act.

3. Exemption, exclusion and withdrawal.
4. Extension.

Searching Posts.

5. Searching posts.

Import.

6. Restriction upon import of cannon and certain other articles.
7. Restriction upon import of arms, ammunition and military stores from Portuguese India.
8. Restriction upon import of certain rifles.
9. Import of arms, ammunition or military stores into certain ports.
10. Import of arms, ammunition or military stores by sea from Madras, Rangoon or Bombay into certain ports.
11. Import by land or river of arms, ammunition or military stores, otherwise than into Ajmer-Merwara.
12. Import of arms, ammunition or military stores into Ajmer-Merwara.
13. Scrutiny by railway authorities of consignments.
14. Production and delivery of import licenses.

Export.

15. Restriction upon export by sea of cannon and certain rifles.
16. Export by sea of arms, ammunition or military stores from and to certain ports.
17. Export by sea of arms, ammunition or military stores from certain ports to ports in Native States or foreign territory.
18. Export by land or river of arms, ammunition or military stores to Native States or out of Ajmer-Merwara.
19. Delivery of export licenses.

Transport.

20. Prohibition of transport of arms, ammunition or military stores otherwise than under license.
21. Restriction upon transport of cannon and certain other articles.
22. Transport of arms, ammunition or military stores.
23. Delivery of transport licenses.

RULES.

Manufacture and Sale.

24. Manufacture, conversion, sale and keeping for sale of arms, ammunition or military stores.

Possession.

25. Restriction upon possession of cannon and certain other articles.
26. Possession of fire-arms, ammunition or military stores.

Possession and Going Armed.

27. Possession of arms and ammunition and going armed for sport, protection or display.
28. Possession of arms and ammunition and going armed for the destruction of wild animals.
29. Possession of arms and ammunition, and going armed for the protection of crops.
30. Going armed on a journey.

Possession and Import or Transport.

31. Possession by dealers of certain balled ammunition, with liberty to import.
32. Possession and transport by cultivators and contractors of certain blasting material.

Applications for and Grant of Licenses.

33. Consent or previous sanction in certain cases.
34. Particulars to be stated in applications.
35. Form and language of licenses.
36. Duration and renewal of licenses.
37. Discretion and control of authorities empowered to grant licenses.
38. Obligation to produce licenses.

Fees.

39. Fees payable for licenses.
40. Fees payable for duplicates.
41. Collection and refund of fees.

THE SCHEDULES.

THE RULES.

Short Title.

1. These rules may be called the Indian Arms Rules, 1909.

Interpretation.

2. In these rules, unless there is anything repugnant in the subject or context—

(*a*) all words and expressions, which are defined in the General Clauses Act, 1897, shall have the meaning

respectively assigned to them thereby; and the provisions of sections 9, 10 and 13 to 19 of the said Act shall be deemed to apply as if these rules were an enactment made by the Governor General in Council after the commencement of the said Act.

(*b*) all references to the "Magistrate of the District" shall, in the case of Aden, be construed as referring to the Assistant Resident.

Application of the Act.

Exemption, exclusion and withdrawal.

3. Under section 27,—

(*a*) the persons and classes of persons,

(*b*) the arms and ammunition, and

(*c*) the parts of British India,

specified or described in Schedules I to IV are, respectively, exempted, excluded and withdrawn to the extent there indicated, from the operation of prohibitions and directions contained in the Act.

Extension.

4. For the purposes of definition of "military stores" contained in section 4, all sections of the Act are extended, throughout British India, to all lead, sulphur and saltpetre.

Searching Posts.

Searching posts.

5. For the purposes of section 11, searching posts shall be established at the land custom-houses between British India and—

(*a*) the French Settlements on the eastern and western coasts, and

(*b*) the Portguese Settlements on the western coast.

Import.

Restriction upon import of cannon and certain other articles.

6. (1) A license for the import of—

(*a*) cannon,

(*b*) articles designed for torpedo service,

(*c*) war-rockets, or

(*d*) machinery for the manufacture of arms or ammunition,

shall not be granted save under the signature of a Secretary to the

Government of India in the Home Department or, so far as the district of Ajmer-Merwara, is concerned, in the Foreign Department.

(2) A copy of every license granted in accordance with sub-rule (1) shall be forthwith sent—

(*a*) Where the articles are consigned to a Presidencytown or Rangoon, to the Commissioner of Police, or

(*b*) Where they are consigned to any other place, to the Magistrate of the district in which such place is situated.

Restriction upon import of arms, ammunition and military stores from Portuguese India.

7. A license shall not be granted for the import of any arms, ammunition or military stores from Portuguese India.

Form I

Restriction upon import of certain rifles.

8. (1) A license shall not be granted for the import by sea or river or land—

(*a*) of rifles of ·303 or of ·450 bore or parts of or fittings for rifles of such bores or, save as otherwise provided by rule 31, of ammunition which can be fired from such rifles;

(*b*) save by special order certified under the signature of a Secretary to the Government of India in the Home Department or, so far as the district of Ajmer-Merwara is concerned, in the Foreign Department, of rifles, or parts of or fittings for rifles, of any other bore;

(*c*) of any fire-arms or ammunition into Burma through the medium of the Post Office.

(2) Nothing in sub-rule (1) clause (*b*), shall be deemed to limit or otherwise affect the power to grant, save as otherwise provided by rule 7, a license for the import of rifles, or parts of or fittings for rifles, which, in the opinion of the authority granting the license, are intended in good faith for sporting purposes.

(Note).

Government Notification.

Home Department No. 794, dated 26th March 1900.

Rifles of prohibited bores imported into India by travellers and detained by the Collector of Sea Customs should be sent at the owner's expense to the port from which he intends to leave India, there to be kept in bond until claimed by him, provided that the Customs Officer is satisfied that the importation was made in ignorance of the prohibitions in force and that that the importer is a *bona fide* traveller whose stay in this country will not exceed a reasonable time.

Import of arms, ammunition or military stores into certain ports.

9. (1) Save as otherwise provided by rules 6 to 8, a license may, subject to the provisions of sub-rule (2), be granted for the import by sea—

(*a*) of arms, ammunition or military stores, at any Presidency-town and at Rangoon by the Commissioner of Police;

(*b*) of arms, ammunition or military stores, at the ports of Calicut, Karachi and Aden by the District Magistrate;

(*c*) of saltpetre or lead, at the ports of Akyab and Moulmein by the District Magistrate; and

(*d*) of sulphur in reasonable quantities proved to the satisfaction of the Government of Madras to be required in good faith for medicinal, manufacturing or agricultural purposes, in respect of the port of Tuticorin by the said Government.

(2) All arms, ammunition or military stores imported into Aden shall be—

(*a*) landed at the Abkari Pier at Tawahi only, and

(*b*) removed thence by the importer to such Government warehouse as the Resident may, from time to time, appoint in this behalf.

Import of arms, ammunition or military stores by sea from Madras, Rangoon or Bombay into certain ports.

10. Save as otherwise provided by rules 6 to 8, a license for the import by sea of arms, ammunition or military stores— Form II.

(*a*) from the port of Madras into the port of Tuticorin, Cochin, Bimlipatam, Coconada, Negapatam, Mangalore, Gopalpore, Vizagapatam, Pamban or Masulipatam, or

(*b*) from the port of Rangoon into the port of Akyab, Moulmein, Sandoway, Kyaukpyu, Tavoy or Mergui,

(*c*) from the port of Bombay into the port of Cochin or Mangalore,

may be granted by the Magistrate of the district in which the port of import is situated.

Form III.

Import by land or river of arms, ammunition or military stores, otherwise than into Ajmer-Merwara.

11. (1) Save as otherwise provided by rules 6 to 8, and subject to the provisions of rule 33, sub-rule (2), a license for the import by land or river, otherwise than into Ajmer-Merwara, of arms, ammunition or military stores may be granted,

(*a*) where the arms, ammunition or stores are consigned to a Presidency-town or to Rangoon, by the Commissioner of Police, or

(*b*) where they are consigned to any other place, by the Magistrate of the district in which such place is situated.

(2) Where arms belonging to any person who—

(*a*) resides in a Native State in India, and

(*b*) is exempted under schedule I from the necessity for taking out a license in respect of such arms,

are imported solely for the purpose of repair, the Political Agent for such State may grant a similar license, which shall also cover the re-export to such State of such arms.

(3) Where the arms, ammunition or stores are imported from a Native State, a copy of the license shall be forthwith sent to the Political Agent for such State.

(4) Where the arms, ammunition or stores are imported by road or river and consigned to a district not on the frontier of British India, a copy of the license shall be forthwith sent to the Magistrate of the district into which they cross such frontier; and such Magistrate may, in his discretion, require the licensee to produce them for his inspection before allowing them to leave the district.

(5) Where the arms, ammunition or stores are imported by rail, a copy of the license shall be forthwith sent by the authority granting it to the railway authorities at the place to which such arms, ammunition or stores are consigned.

Form IV.

Import of arms, ammunition or military stores into Ajmer-Merwara.

12. (1) Save as otherwise provided by rules 6 to 8, a license for the import into the district of Ajmer-Merwara of arms, ammunition or military stores may be granted—

(*a*) under the signature of the Secretary to the Government of India in the Foreign Department, or

(*b*) under the signature of a Secretary to the Government of Bombay, provided that the ammunition is *bona fide* required for the exclusive use of the Rajputana-Malwa Railway; and that the application for such license is made by a responsible officer of the said Railway, or

(*c*) by any other officer specially empowered by the Government of India in this behalf.

(2) A copy of every license granted under sub-rule (1) shall be forthwith sent to the Commissioner of the district of Ajmer-Merwara.

(3) Where the arms, ammunition or stores are imported by rail, a copy shall be forthwith sent by the officer granting the license to the railway authorities at the place to which such arms, ammunition or stores are consigned.

Scrutiny by railway authorities of consignments.

13. (1) The railway authorities, to whom a copy of a license has been sent under rule 11, sub-rule (5), or rule 12, sub-rule (3), shall require the consignee to produce the original license and shall satisfy themselves—

(*a*) that the arms, ammunition or stores claimed by him correspond with the description given in such license, and

(*b*) that such license is identical in substance with the copy sent to them.

(2) Where, in any case referred to in sub-rule (1),—

(*a*) the consignee fails to produce the original license, or

(*b*) the arms, ammunition or stores claimed by him do not correspond with the description given in such license, or

(*c*) the license is not identical in substance with the copy sent to the railway authorities,

such authorities shall not deliver the consignment and shall forthwith inform the nearest Magistrate.

Production and delivery of import licenses.

14. (1) The consignee of arms, ammunition or military stores imported under a license shall—

(*a*) where the consignment crosses the frontier by land or river, produce the license, within six days of such crossing, before the Magistrate of the district into which the consignment so crosses, or other officer empowered by him in this behalf; and

(*b*) in any case in which the consignment is imported by land or river, deliver the license, within six days of the arrival of such consignment at its destination—

(*i*) in any Presidency town or Rangoon, to the Commissioner of Police, or

(*ii*) in any other place, to the Magistrate of the district.

(2) Every officer before whom a license is produced or to whom a license is delivered under sub-rule (1) shall satisfy himself—

(*a*) that the arms, ammunition or stores correspond with the description given in the license, and

(*b*) that any deficiency is properly accounted for.

Export.

Restriction upon export by sea of cannon and certain rifles.

15. (1) A license shall not be granted, save by special order certified under the signature of a Secretary to the Government of India in the Home Department or, so far as the district of Ajmer-Merwara is concerned, in the Foreign Department, for the export by sea of—

(*a*) cannon, or

(*b*) save as otherwise provided in sub-rule (2) rifles, or parts of or fittings for rifles.

(2) Nothing in sub-rule (1), clause (*b*), shall be deemed to limit or otherwise affect the power to grant a license for the export by sea of rifles, or parts of or fittings for rifles, which, in the opinion of the authority granting the license, are intended in good faith for sporting purposes.

Export by sea of arms, ammunition or military stores from and to certain ports.

Form V

16. (1) Save as otherwise provided by rule 15, a license for the export by sea of arms, ammunition or military stores may, subject to the provisions of sub-rules (2) and (4), be granted—

(*a*) at the port of any Presidency-town or Rangoon, by the Commissioner of Police, or

(*b*) at the port of Calicut, Karachi or Aden, by the Magistrate of the district.

(2) Save as otherwise provided in sub-rule (3), every license granted under sub-rule (1) shall be for export either—

(*a*) subject to the provisions of rule 33, sub-rule (2), to such of the ports mentioned in clause (*a*) or clause (*b*) of sub-rule (1), or

(*b*) from the port of Madras to such of the ports mentioned in rule 10 (*a*), or

(*c*) from the port of Rangoon to such of the ports mentioned in rule 10 (*b*), or

(*d*) from the port of Bombay to such of the ports mentioned in rule 10 (*c*), or

(*e*) to such other place in His Majesty's dominions outside India,

as may be specified or described therein.

(3) A license may be granted at any of the ports mentioned in clause (*a*) or clause (*b*) of sub-rule (1) for the export by sea of saltpetre or lead to the ports of Akyab or Moulmein.

(4) A copy of every license of the nature referred to in clauses (*a*), (*b*), (*c*) and (*d*) of sub-rule (2) and in sub-rule (3) shall be forthwith sent—

(*a*) where the arms, ammunition or stores are consigned to any Presidency-town or Rangoon, to the Commissioner of Police, or

(*b*) where they are consigned to any other place, to the Magistrate of the district in which such place is situated.

Export by sea of arms, ammunition or military stores from certain ports to ports in Native States or foreign territory.

17. (1) A license may be granted under the signature of the Secretary to the Government of India in the Foreign Department, or by the officers enumerated in column 1 of Schedule V from the ports mentioned in column 2 to the ports mentioned in column 3, and subject to the conditions mentioned in column 4 in each case, for the export by sea of arms other than— Form VI

(*a*) cannon, or

(*b*) such rifles or parts of or fittings for rifles as fall within the restriction imposed by rule 15,

or for the export by sea of ammunition or military stores from any of the ports of Madras, Bombay, Calcutta, Rangoon, Calicut, Karachi, or Aden—

(*i*) to any port in any Native State in India, or

(*ii*) subject to the provisions of sub-rule (3), to any port, other than a British port, in any other foreign territory.

(2) A license shall not be granted under sub-rule (1) for export to any such port on the sea-board of Arabia as is referred to in clause (*ii*) of that sub-rule, other than a port in the political charge of the Resident—

(*a*) at Aden,

(*b*) in the Persian Gulf, or

(*c*) in Turkish Arabia.

(3) A copy of every license issued under this rule for the export of arms, ammunition or military stores to any port in a Native State in India or to any port in the political charge of the Resident at Aden or of the political Resident in the Persian Gulf or of the Political Resident in Turkish Arabia shall be sent forthwith by the authority granting it to the Political Agent, Resident (unless the Resident at Aden be the authority granting the license, or the Political Resident concerned, and such Political Agent, Resident or Political Resident may, in his discretion, require the licensee or his Agent to produce the arms, ammunition or military stores covered by such license for his inspection before permitting them or it to be delivered to the consignee.

(4) The authority granting a license under this rule shall also send a copy of such license to the agents or master of the vessel by which it is intended that the arms, ammunition or military stores covered by the license shall be shipped to the port of destination, and such agents or master shall not receive for despatch any case or package containing arms, ammunition or military stores unless such case or package is accompanied by the original license, and shall satisfy themselves or himself—

(*a*) that the arms, ammunition or stores correspond with the description given in such license, and

(*b*) that such license is identical in substance with the copy sent to them or him.

Where in any case referred to in sub-rule (5)—

(*a*) the case or package is not accompanied by the original license, or

(*b*) the arms, ammunition or stores contained therein do not correspond with the description given in such license, or

(*c*) the license is not identical in substance with the copy sent to them or him,

such agents or master shall not receive the consignment for despatch and shall forthwith inform the nearest Magistrate.

Export by land or river of arms, ammunition or military stores, to Native States or out of Ajmer-Merwara.

18. (1) A license for the export by land or river— Form VII

(*a*) of arms, ammunition or military stores to any place beyond the frontier of British India, or

(*b*) of arms, ammunition or military stores out of the district of Ajmer-Merwara, may be granted—

(*i*) under the signature of a Secretary to the Government of India in the foreign Department, or

(*ii*) by the officers enumerated in column 1 of Schedule VI for the places mentioned in column 2 and subject to the conditions mentioned in column 3 in each case.

(2) A license for the export by land or river of arms, ammunition or military stores to any Native State in the political charge of the Government of Madras, Bombay, Bengal, the United Provinces of Agra and Oudh, the Punjab or Eastern Bengal and Assam, or of the Chief Commissioner of the Central Provinces may be granted under the signature of a Secretary to such Government or such Chief Commissioner, respectively, or by such other officer as may be empowered by the Government of India in this behalf.

(3) Where any arms, ammunition or stores exported under a license granted under this rule are exported to a Native State, a copy of such license shall be forthwith sent to the Political Agent for such State.

(4) Where the arms, ammunition or stores are exported by road or river, a copy of the license shall be forthwith sent to the Magistrate of the district out of which they cross the frontier of British India; and such Magistrate may, in his discretion, require the licensee to produce them for his inspection before allowing them to leave the district.

(5) Where the arms, ammunition or stores are exported by rail, a copy of the license shall be forthwith sent by the authority granting it,—

(*a*) in the case of a consignment despatched from a Presidency-town or from Rangoon, to the Commissioner of Police, and,

(*b*) in all other cases, to the Magistrate of the district from which the consignment is to be despatched.

(6) The Commissioner of Police or Magistrate of the district shall forthwith send a copy to the Railway authorities at the place from which the consignment is to be despatched; and the Railway authorities shall not receive for despatch any case or package containing arms, ammunition or military stores unless accompanied by the original license and shall satisfy themselves—

(*a*) that the arms, ammunition or stores correspond with description given in such license, and

(*b*) that such license is identical in substance with the copy sent to them.

(7) Where in any case referred to in sub-rule (6)—

(*a*) the case or package is not accompanied by the original license, or

(*b*) the arms, ammunition or stores contained therein do not correspond with the description given in such license, or

(*c*) the license is not identical in substance with the copy sent to them,

such authorities shall not receive the consignment for despatch, and shall forthwith inform the nearest Magistrate.

Delivery of export licenses.

19. (1) Where any arms, ammunition or military stores are exported by road or river,—

(*a*) the consignee, or

(*b*) if the arms, ammunition or stores are in charge of any person travelling with them, such person

shall, within six days of the arrival of the consignment in the district out of which it is to cross the frontier and before it so crosses, deliver the license to the Magistrate of such district or other officer empowered by him in this behalf.

(2) Every officer to whom a license is delivered under sub-rule (1) shall satisfy himself—

(*a*) that the arms, ammunition or stores correspond with the description given in the license, and

(*b*) that any deficiency is properly accounted for.

(Notes).

Government Notifications, etc.

(1) **Forn. Dept. No. 1816-I, 2nd June, 1890.**

No license is required for the export of arms, ammunition or military stores issued to Native States from British arsenals under the orders of Government. Each consignment however should be covered by a certificate signed by the Officer-in-charge of the arsenal to the effect that it is exported by order of Government under S. 1 (*b*) of the Act. **Y**

(2) **Forn. Dept. No. 2735-I, 8th July 1889.**

It is a matter of great importance that effectual measures should be taken to prevent arms exported for retail sale in the Native State from getting into the hands of persons unfit to possess such weapons : but after a license for a consignment has been given, it is practically impossible to secure any control over the ultimate disposal of the arms covered by it. It is not, therefore, thought advisable that the export of rifles, guns, and revolvers for sale in Native States should ordinarily be permitted, except under the restriction mentioned below.

Political Officers should be instructed not to give in future certificates of their consent to intending importers of arms without first satisfying themselves that the arms are actually required for the personal use of some responsible and respectable person who would be entitled to possess them under the Arms Act Rules if he were in British India. In large Cantonments such as Secunderabad, Mhow, etc., it will not be practicable, and in some cases perhaps not desirable, to enforce this restriction so unreservedly as in Native States proper, but even there the local authorities should be careful in the matter of granting certificates for the import of arms ; and it is presumed that in all such Cantonments there will always be some control over the sale of any arms that may be imported. **Z**

(3) **Forn. Dept. No. 2864-I, 29th June 1887.**

In the transmission of arms, ammunition and military stores from one British district to another through foreign territory, the procedure prescribed is that both an export and an import license in the regular form should be taken out—the export license for the transmission of the consignment to foreign territory, and the import license to cover its re-conveyance into British territory.

Whenever such a case may arise, a copy of the original license for export should be communicated to the Magistrate of the place to which the consignment is ultimately destined. **A**

Transport.

Prohibition of transport of arms, ammunition or military stores otherwise than under license.

20. (1) Save as herein otherwise provided, the transport of any description of arms, ammunition or military stores is prohibited over the whole of British India, except under a license and to the extent and in the manner permitted by such license.

(2) Subject to the provisions of rule 33, nothing in sub-rule (1) shall be deemed to apply to—

(*a*) arms, ammunition or military stores which are covered by a license for their import or export and are being transported in accordance with such license—

(*i*) from the port or other place of import to the place or destination in British India;

(*ii*) from the place of despatch in British India to the port or other place of export;

(*iii*) in the port of import and re-export during transhipment.

(*b*) arms, ammunition or military stores transported—

(*i*) by any person, licensed to possess such articles or exempted from the liability to obtain such a license, in reasonable quantities for his own use from the premises of a licensed dealer, or

(*ii*) by a licensed dealer, in a case or package legibly addressed to such a person as is referred to in clause (*i*), in compliance with an order given by such person for the supply of such articles in reasonable quantities for his own use; or

(*c*) arms and ammunition transported, in reasonable quantities for his own use, by any person lawfully entitled to possess arms or to go armed.

Restriction upon transport of cannon and certain other articles.

21. (1) A license for the transport of—

(*a*) cannon,

(*b*) articles designed for torpedo service,

(*c*) war-rockets, or

(*d*) machinery for the manufacture of arms or ammunition,

shall not be granted save under the signature of a Secretary to the Government of India in the Home Department or, so far as the district of Ajmer-Merwara is concerned, in the Foreign Department.

(2) A copy of every license granted in accordance with sub-rule (1) shall be forthwith sent—

(*a*) where the articles are consigned to a Presidency-town or Rangoon, to the Commissioner of Police, or

(*b*) where they are consigned to any other place, to the Magistrate of the district in which such place is situated.

Transport of arms, ammunition or military stores.

22. (1) Save as otherwise provided by rule 21, and subject to the provisions of rule 33, sub-rules (2) and (3) and rule 36, sub-rule (2), a license for the transport of arms, ammunition or military stores may be granted— Form VIII

(*a*) where the arms, ammunition or stores are consigned from a Presidency-town or from Rangoon, by the Commissioner of Police, or

(*b*) where they are consigned from any other place, by the Magistrate of the district in which such place is situated,

(*c*) where they are consigned from any place in Baroda to any other place in Baroda separated therefrom by British Indian territory, by the Resident or Assistant Resident in Baroda.

(2) A copy of every license granted under sub-rule (1) for transport beyond the local limits of the authority of the officer granting it shall be forthwith sent—

(*a*) where the arms, ammunition or stores are consigned to any Presidency town or Rangoon, to the Commissioner of Police, or

(*b*) where they are consigned to any other place, to the Magistrate of the district in which such place is situated.

(3) A copy of every license granted under sub-rule (1) by the Magistrate of a district for transport within the limits of such district shall be forthwith sent to the subordinate Magistrate (if any) having authority at the place to which the arms, ammunition or stores are consigned.

(4) Where the arms, ammunition or stores are transported by rail, a copy of the license shall be attached to the way-bill or invoice, as the case may be, and telegraphic advice of every such consignment shall be sent by the railway authorities from the forwarding to the receiving station; and the consignment shall not leave the railway premises unless the railway police or, if there are no railway police, the railway authorities have satisfied themselves that the arms, ammunition or military stores correspond with the description given in the license.

Delivery of transport licenses.

23. (1) The consignee of any arms, ammunition or military stores transported by land or river under a license, other than a general license granted under rule 32, sub-rule (2), shall deliver the license, within six days of the arrival of the consignment at its destination,—

(*a*) in any Presidency-town or Rangoon, to the Commissioner of Police, or

(*b*) in any other place, to the District Magistrate having jurisdiction over the place of destination or such other Magistrate as he may appoint for this purpose.

(2) Any officer to whom a license is delivered under sub-rule (1) shall satisfy himself—

(*a*) that the arms, ammunition or military stores correspond with the description given in the license, and

(*b*) that any deficiency is properly accounted for,

and any subordinate Magistrate, to whom a license is delivered under clause (*b*) of that sub-rule, shall return it to the Magistrate of the district.

(Notes).

Government Notifications, etc.

(1) **Home Dept. No. 38-2955, 9th Nov. 1888.**

Although the word 'transport' as used in this Act would in a certain sense include every movement from place to place, yet, the Government of India consider that, looking to the general objects of the Act, and the difficulty which might result from construing the word in its widest sense it is reasonable to attach to it a more restricted meaning, which it would not, perhaps be easy to define precisely, but which would certainly not include such movement as the removal of arms from a warehouse to a shop in the same town, or the landing of arms imported. Under such restricted interpretation of the term no license is required for the removal of ammunition from one magazine and warehouse to another in the same locality. **B**

(2) **Home Dept. Letter No. 44-1737, 23rd Sept. 1879.**

To avoid the possibility of transport licenses being used more than once, the time for which such licenses are valid should invariably be entered in the proper column of the license. The time allowed, specially in the case of arms, ammunition or military stores, licensed for transport through any part of British India to the frontier, should be carefully restricted to such period as may be considered reasonable.

(3) **Foreign Dept. No. 2864-I, dated 29th June 1897.** **C**

See Note 3, to Rule 19. **D**

Manufacture and Sale.

24. (1) A license—

Manufacture, conversion, sale and keeping for sale of arms, ammunition or military stores.

Form XI.
Form XII.

(*a*) to manufacture, convert, sell or keep and sell, or

(*b*) to keep and sell

any arms, ammunition or military stores may, save as otherwise provided by sub-rule (2) be granted—

(*i*) in any Presidency town or Rangoon, by the Commissioner of Police, or

(*ii*) in any other place, by the Magistrate of the district.

(2) A license— Form XIII. Form XIV.

(*a*) to manufacture, convert, sell or keep and sell, or

(*b*) to keep and sell

breech-loading rifles, rifle ammunition or military stores for rifles shall not be granted save—

(*i*) by the local Government, or

(*ii*) in Sind, by the Commissioner in Sind.

(3) The local Government or the Commissioner in Sind may, by licenses granted by it or him under this rule, authorize selected dealers to keep and sell a specified amount of ammunition for rifles of ·303 or of ·450 bore :

Provided that the licensee shall not sell from his stock to any person who does not hold—

(*a*) a license to possess such ammunition, or

(*b*) a license for the export of balled ammunition from a Native State granted by a Political Officer under the third proviso to the second paragraph of the Resolution of the Government of India in the Foreign Department, No. 3001 I.-A., dated the 27th June, 1903.

(4) Every Magistrate and every Police officer not below the rank of Inspector, or, if the local Government so directs, of Sub-Inspector may, within the local limits of his authority,—

(*a*) enter and inspect any premises in which arms or ammunition or military stores, including sulphur, are manufactured, converted, sold, or kept and sold, and

(*b*) examine the stock and accounts of receipts and sales of arms, ammunition or military stores.

Possession.

25. (1) A license for the possession of—

Restriction upon possession of cannon and certain other articles.

(*a*) cannon, Form I.

(*b*) articles designed for torpedo service,

(*c*) war-rockets, or

(*d*) machinery for the manufacture of arms or ammunition, shall not be granted save under the signature of a Secretary to the Government of India in the Home Department or, so far as the district of Ajmer-Merwara is concerned, in the Foreign Department.

(2) A copy of every license granted in accordance with sub-rule (1), shall be forthwith sent—

(*a*) where the articles are to be kept in any Presidency town or Rangoon, to the Commissioner of Police; or

(*b*) where they are to be kept in any other place, to the Magistrate of the district.

Form XV.

Possession of fire-arms, ammunition or military stores.

26. Save as otherwise provided by rule 25 and rule 33, sub-rules (2) and (4), a license for the possession only of fire-arms, ammunition or military stores may be granted by the Magistrate of any district, or in the Presidency towns or Rangoon, by the Commissioner of Police.

Possession and Going Armed.

Possession of arms and ammunition and going armed for sport, protection or display.

Form XVI.

27. (1) Save as otherwise provided in rule 25 and rule 33, sub-rules (2) and (4), a license for the possession of arms and ammunition in reasonable quantities and for going armed for the purposes of sport, protection or display may, subject to the provisions of sub-rules (4) and (5) of this rule, be granted—

(*a*) in any Presidency town or Rangoon, by the Commissioner of Police, or

(*b*) in any other place, by the Magistrate of the district, provided that no license shall be granted for the possession of rifles of the ·303 or ·450 bore or ammunition for the same, or for going armed with such rifles, unless such rifles and ammunition have been lawfully imported into British India.

(2) A license granted under sub-rule (1) shall on counter-signature—

(*a*) by the Commissioner, or

(*b*) where there are no Commissioners, by such other officer as the local Government may empower in this behalf,

be valid for such divisions or districts within the Province as he may specify.

(3) In places to which section 15 applies, a license may be granted under sub-rule (1) to the heir or successor of any person to whom arms have been presented by or under the orders of the Government, in respect of such arms.

(4) A license may be granted under sub-rule (1) for the possession of reasonable quantities of balled ammunition which can be fired from rifles of ·303 or ·450 bores to any person lawfully in possession for sporting purposes of a rifle of such bore.

(5) On every license of the nature referred to in sub-rule (4), there shall be entered the amount of balled ammunition which the licensee may possess during the period of twelve months next ensuing.

(Notes).

Government Notifications, etc.

(1) **G. O. No. 192, 8th Feb. 1882.**

No Officer has been authorised by the Government of Madras to countersign license in view to give them validity for all the districts in the Presidency. The proper course is for the applicant to obtain the countersignature of the Magistrates of the various districts in which he desires his license to be in force or to take out a fresh license for each district. **E**

(2) **Notn. No. 6344, 14th November, 1892.**

The Commissioner of Police, Bombay, has been authorised to countersign licenses granted by him for the City of Bombay in order to render them valid for all the districts of the Presidency. **F**

(3) **Home Dept. Letter No. 6315-6324, 13th December, 1901.**

Licenses for the possession of more than one revolver of European manufacture or magazine pistol pipe should not be issued to non-exempted person.

A District Magistrate can give a license for the possession of a rifled revolver without the previous sanction of the Board of Revenue in Madras, Chief Commissioner of Coorg and of the Commissioner of a Division in other Provinces. **G**

(4) **Home Dept. No. 3495, 20th Dec. 1902.**

The prohibition against the possession of ammunition shall be confined absolutely to ammunition of ·303 and ·450 bore. **H**

(5) **Home Dept. Nos. 906—912, 20th Feb. 1904.**

To enable persons who are already in possession of such weapon (rifles of prohibited bores) to obtain cartridges for their use, the Governor-General-in Council has decided that they may be allowed to possess such ammunition to the extent of 200 rounds annually for each class of rifle subject to the condition that they should obtain under the new rule 13-B, a license which should be made over to the selected dealer referred to in the new clauses added to rule 11. This provision will apply to all persons whether exempted or not but in the case of exempted persons the license will be granted free of license fee. **I**

Form XVII. Possession of arms and ammunition and going armed for the destruction of wild animals.

28. Save as otherwise provided by rule 33, sub-rules (2) and (4), a license for the possession of arms and ammunition and for going armed for the destruction of wild animals which do injury to human beings or cattle may be granted by the Magistrate of any district.

Form XVIII. Possession of arms and ammunition and going armed for the protection of crops.

29. Save as otherwise provided by rule 33, sub-rules (2) and (4), a license for the possession of arms and ammunition and for going armed for the destruction of wild animals which do injury to crops or cattle may be granted by the Magistrate of any district:

Provided that such license—

(*a*) shall only be granted to *bona fide* cultivators;

(*b*) shall be valid only for the place or tract specified in the license by the licensing officer.

Form XIX. Going armed on a journey.

30. (1) Save as otherwise provided by rule 33, sub-rules (2) and (4), a license for going armed on a journey in or through any Province may be granted—

(*a*) in any Presidency town or Rangoon, by the Commissioner of Police;

(*b*) in any other place, by the Magistrate of the district; or

(*c*) in the case of a person residing in any Native State in India, by the Political Agent for such State.

(2) Where a Commissioner of Police or Magistrate of a district receives an application for a license of the nature referred to in sub-rule (1) from any person who—

(*a*) is not resident within the local limits of his authority; or

(*b*) is not personally known to him, he shall, before granting the license, ascertain—

(*i*) When the applicant resides in any Presidency-town or Rangoon, from the Commissioner of Police,

(*ii*) when the applicant resides in any other place in British India, from the Magistrate of the district, or

(*iii*) when the applicant resides in any Native State in India, from the Political Agent for such State,

whether there is any objection to the grant of the license, unless, for reasons to be recorded, he considers this precaution to be clearly unnecessary.

(Note).

Government Notifications, etc.

Forn. Dept. Letter No. 2273-J, 8th June, 1889.

No political officer shall under any circumstances, issue a license in Form IX (present Form XIX) covering more than 30 armed retainers without previous reference to the local Government of the Province in which the licensee proposes to travel. In the event of a local Government dissenting from the recommendation of a political officer not serving directly under its orders, it would still be open to him for sufficient reasons to refer the matter for the consideration of the Government of India, but armed retinues must be discouraged as much as possible. **J**

Possession and Import or Transport.

Possession by dealers of certain balled ammunition with liberty to import.

31. (1) A licensed dealer authorized by the local Government under rule 24, sub-rule (3), to keep and sell a specified amount of balled ammunition for rifles of ·303 or of ·450 bore may be permitted—

(*a*) in any Presidency-town or Rangoon, by the Commissioner of Police, or

(*b*) in any other place, by the Magistrate of the district, to import such ammunition up to such amount.

(2) Where application is made under sub-rule (1) for permission to import balled ammunition, the dealer shall produce his license and, if permission is granted, the authority granting it shall endorse on the license the quantity of balled ammunition for which, and the date on which, such permission was granted.

(Note).

Government Notifications, etc.

Public-Simla, the 1st Oct., 1909.

No. 3677—In exercise of the powers conferred by S. 17 of this Act, the Governor-General in Council is pleased to make the following amendment to the Indian Arms Rules, 1909 :—Rule 31 (1)—After the words ' local Government' insert the words 'or the Commissioner in Sindh.' **K**

Possession and transport by cultivators and contractors of certain blasting material.

32. (1) A license may be granted—

(*a*) in any Presidency-town or Rangoon, by the Commissioner of Police, or

Form IX.

(*b*) in any other place, by the Magistrate of the district, to any cultivator, contractor or other like person for the possession and transport of gun-powder, fuses, dynamite, blasting gelatine and detonating caps in reasonable quantities proved to the satisfaction of the authority granting the license to be required in good faith for blasting purposes.

Form X.

(2) A general license may be granted by similar authority to dealers in explosives, contractors and mining agents for the transport of dynamite, blasting gelatine, detonating caps and other explosive material ordered or required by the consignee in good faith for blasting purposes.

(3) The provisions of rule 23, relating to the delivery of transport licenses and the scrutiny of articles transported, shall, so far as they can be made applicable, be deemed to apply in the case of gun-powder, fuses, dynamite, blasting gelatine and detonating caps transported under a license granted under sub-rule (1).

(Note).

Government Notifications, etc.

Bom. Govt. Notn. No. 3917, 28th Oct., 1890.

Licenses to possess blasting powder and fuses for use in the construction of local fund works may be granted without payment of fee, to the offices of local Boards and to contractors under such Boards when necessary to fulfil their contracts with the Boards. **L**

Applications for and grant of licenses.

Consent or previous sanction in certain cases.

33. (1) A license, having effect beyond the local limits of the authority of the officer granting it, shall not be granted for the export, import or transport of any arms, ammunition or military stores—

(*a*) to any Native State in India, without the consent of the Political Agent for such State;

provided that the consent of such Political Agent shall not be necessary in cases where the consignee is a European subject of His Majesty and a gazetted civil or commissioned military officer, and the consignment is intended for the personal use only of the consignee;

(*b*) to any Presidency-town or Rangoon, without the consent of the Commissioner of Police; or

(*c*) to any other place in British India, without the consent of the Magistrate of the district.

(2) Save by the Commissioner of Police in any Presidency town or Rangoon, a license shall not be granted under rule, 11, rule 16, sub-rule (2), clause (*a*), rule 22, rule 26, rule 27, rule 28, rule 29, or rule 30 in respect of any breech-loading rifle or balled ammunition without the previous sanction—

(*a*) in the Madras Presidency, of the Board of Revenue;

(*b*) in the province of Coorg, of the Chief Commissioner; or

(*c*) in any other place, of the Commissioner.

(3) Save as aforesaid, a license shall not be granted under rule 22 for the transport of any breech-loading rifle or balled ammunition to any place in—

(*a*) the North-West Frontier Province, or

(*b*) the Rawalpindi or the Dera Ghazi Khan or the Minawali or the Attock District of the Punjab.

without the previous sanction—

(*i*) of the Local Government, or,

(*ii*) whether rifle or ammunition is transported from Sind, of the Commissioner in Sind.

(4) A license shall not be granted under rule 25, rule 27, sub-rule (1), clause (*b*), rule 28, rule 29 or rule 30, sub-rule (1), by any Magistrate of a district in Burma without the previous sanction of the Commissioner.

(5) The consent or previous sanction referred to in this rule may be obtained either—

(*a*) by the applicant for the license, or

(*b*) by the officer to whom application for the grant of such license is made.

(6) Where the consent or previous sanction is sought by the officer to whom application for the grant of the license is made, he shall send a copy of the proposed license to the authority whose consent or previous sanction is required; and, on receipt of the reply of such authority, he shall either grant the license or inform the applicant that his application is refused.

Particulars to be stated in applications.

34. (1) Every person who wishes to obtain a license under these rules shall apply in writing to the nearest authority empowered to grant such license, and shall in such application furnish all such particulars as may be necessary to enable such license to be granted.

(2) In particular and without prejudice to the generality of sub-rule (1) every application for a license—

(*a*) for the import by land or river,

(*b*) for the export, or

(*c*) for the transport

of any arms, ammunition or military stores shall specify—

(*i*) the place of destination,

(*ii*) the route,

(*iii*) the time likely to be occupied in the journey, and

(*iv*) the quantity, description, average price and purpose of each kind of arms, ammunition or stores.

(3) Where the grant of the license requires the consent or previous sanction of some other authority specified in rule 33, the application shall state whether such consent or previous sanction has been obtained, and, if so, shall be supported by evidence thereof.

Form and language of licenses.

35. (1) Every license shall be granted or renewed and every pass shall be granted in the appropriate form set forth in Schedule VII and save as therein otherwise expressly provided, the arms, ammunition or military stores specified and the persons named in the license shall alone be covered thereby.

(2) Every such license shall be written or printed,—

(*a*) where it is granted in a Presidency-town or in Rangoon or where it is granted in a district and is intended for use beyond the limits of such district, in English and, if the licensing officer so directs, in the vernacular, or,

(*b*) where it is granted in a district and is intended for use within the limits of such district, in English or in the vernacular as the licensing officer may direct.

Duration and renewal of licenses.

36. (1) Save as herein otherwise provided, every license under these rules shall, unless previously forfeited be in force for such period and expire on such day as, subject to any restrictions or limitations imposed by the appropriate form set out in Schedule VII, the authority granting it may enter thereon.

(2) A license for the transport of arms, ammunition or military stores shall not, save for special reasons to be recorded by the authority granting it, be granted for a period longer than twice the time likely to be occupied in the journey to the place of destination by the route indicated on the license.

(3) Every license may, at its expiration and subject to the same conditions (if any) as to consent or previous sanction, be renewed by the authority who granted it.

Discretion and control of authorities empowered to grant licenses.

37. (1) Every authority empowered to grant or renew a license or to give his consent or previous sanction to such grant or renewal may, in his discretion,—

(*a*) refuse to grant or renew such license or to give such consent or sanction, or

(*b*) refer the application for orders to the Government (if any) to which he is subordinate.

(2) Every such authority shall exercise all powers and perform all duties, conferred or imposed by these rules, subject to the control of the executive authorities to whom he is subordinate.

Obligation to produce licenses.

38. (1) Any person who—

(*a*) holds a license granted or renewed or a pass granted under these rules, or

(*b*) is acting under colour of such a license or pass,

shall forthwith produce such license or pass upon the demand of any Magistrate or of any Police officer of a rank not below that of officer in charge of a police-station.

(2) Nothing in sub-rule (1) shall be deemed to limit or otherwise affect the power of any authority empowered to grant or renew a license to grant or renew it upon any condition, not inconsistent with the said sub-rule, with respect to the production of such license.

Fees.

Fees payable for licenses.

39. (1) Every license granted or renewed under these rules shall, save as herein otherwise expressly provided, be chargeable with the fee (if any) indicated on the appropriate form set forth in Schedule VII.

(2) where any arms, other than—

(*a*) cannon, or

(*b*) rifles falling within the prohibition contained in rule 8, or any ammunition or military stores are imported under a license into any British post and re-exported thence and re-imported into any of the ports specified in rule 9 or in rule 10, the necessary licenses for such re-export under rule 16 and for such re-import under rule 9 or rule 10 shall be respectively chargeable with a fee of one rupee only.

(3) The Government of India may, by general or special order, grant exemption from, or reduction of, the fee payable in respect of any license.

(4) The fee payable in respect of the grant or renewal of any license of the nature hereinafter referred to may, by general or special order of the Local Government, be remitted or reduced :—

(*a*) for the import, transport or possession of sulphur in reasonable quantities proved to the satisfaction of the Local Government to be required in good faith for medicinal, agricultural, manufacturing or industrial purposes other than the manufacture of ammunition;

(*b*) for the export to a Native State of ammunition required for the use of a public railway or other public work;

(*c*) under rule 11, to any person for the import of any arms, ammunition or military stores in reasonable quantities proved to the satisfaction of the authority granting the license to be required in good faith for the protection of person or property.

(5) The fee payable in respect of the grant or renewal of any license in form VII may be remitted, subject to the conditions stated in each case, as follows namely :—

(*a*) under the signature of a Secretary to the Government of Madras, Bombay or Bengal in respect of ammunition exported to a Native State for the use of a public railway or other public work.

(*b*) by all Political Officers authorized to grant licenses in form VII, in the case of arms and ammunition exported for the personal use of persons of the classes mentioned in schedule I.

(6) The fee payable in respect of the grant or renewal of any license in form VII shall be remitted in the case of all licenses in that form issued by the Commissioner of Police in Madras or Bombay, the Deputy Commissioner of Police in Calcutta or by the District Magistrates of Meerut and Rawalpindi.

(7) The fee payable in respect of a license in form VII granted by the District Magistrate of Malabar for export to Mahi shall be reduced to one rupee in every case in which the value of the consignment does not exceed twenty rupees.

(Notes).

Government Notifications, Etc.

(1) **Forn. Dept. No. 448-I.P., 21st May, 1881.**

The applications of Native Chiefs (who dwell outside British India, but who purchased ammunition in British India and export it to their own territory) for licenses are exempted from the fees usually levied. **M**

(2) **Bom. Govt. Resn. No. 981, 8th Feb., 1891.**

Applications of Native Chiefs for licenses under this Act are exempt from fees, whether the arms or ammunition are required for personal use or for State purposes. **N**

Fees payable for duplicates.

40. Where a license granted or renewed under these rules is lost or accidentally destroyed, the authority empowered to grant such license may grant a duplicate,—

(*a*) where the original license was granted without the payment of any fee to a cultivator or other like person, free of all fee;

(*b*) where such original license was granted on the payment of a fee not exceeding one rupee, on payment of a fee of the same amount; or,

(*c*) in any other case, on payment of a fee of one rupee.

Collection and refund of fees.

41. (1) All fees payable under rule 39 or rule 40 shall be collected by impressed stamps.

(2) The Government may, by general or special order, direct in regard to any application for a license or duplicate in respect of which a fee is payable,—

(*a*) that the application shall be written upon an impressed stamp of a value equal to such fee, and that in such case the license or duplicate shall be granted or renewed on plain paper, or

(*b*) that the license shall be written upon an impressed stamp, to be supplied by the applicant, of a value equal to such fee, and that in such case the application may be written on plain paper.

(3) Where a fee of not less than one rupee payable under these rules has been collected and the application for the grant or renewal of a license or duplicate is refused, the value of the fee shall be refunded, upon application for the same being made within two months from the date of such refusal.

SCHEDULE I.

PERSONS EXEMPTED.

(Rule 3.)

1. The persons or classes of persons specified or described in the first column of the subjoined table are exempted, in respect of the arms and ammunition described in the second column, when carried or possessed (save where otherwise expressly stated) for their own personal use, from such prohibitions and directions contained in the Act as are indicated in the fourth column, subject to the provisos and restrictions entered in the third column.

The Table.

Persons or classes of persons.	Arms and ammunition.	Provisos and restrictions.	Prohibitions and directions.
(1) Every Maharaja, Raja, Nawab or Member of any Order of Knighthood and every person who— (*a*) holds the Kaisar-i-Hind Medal, or (*b*) bears a title conferred or recognised by the Government of India, or (*c*) holds a sword granted to him in public Darbar under the orders of the local Government or the Commissioner in Sind, or (*d*) holds a certificate received on the occasion of the assumption of the title of Empress of India, by Her late Majesty Queen Victoria, (*e*) is exempted from personal appearance in a Civil Court	All except— (*a*) cannon, (*b*) articles designed for torpedo service, (*c*) war-rockets, (*d*) rifles of ·303 or ·450 bore other than rifles of such bores lawfully imported into British India, and ammunition which can be fired from the same; (*e*) machinery for the manufacture of arms or ammunition.	The arms or ammunition carried or possessed by any person herein exempted shall not exceed such quantities (if any) as— (*a*) the Government of India, or (*b*) a local Government in respect of the territories administered by it or subject to its control may declare to be reasonable for him to carry or possess.	Those contained in sections 13 to 16.
(2) Every Member or ex-Member of the Legislative Council of the Governor-General, the Governor of Madras or Bombay, or the Lieutenant-Governor of Bengal, the United Provinces of Agra and Oudh, the Punjab, Burma or Eastern Bengal and Assam.	Ditto ...	Ditto ...	Ditto.

SCHEDULE I—*contd.*

The Table—contd.

Persons or classes of persons.	Arms and ammunition.	Provisos and restrictions.	Prohibitions and directions.
2 (3) Every Commissioned or Gazetted Officer of His Majesty's Military or Naval forces or of His Majesty's Indian Marine Service, every commissioned native officer of the Imperial Service Troops in active service, every warrant officer, non-commissioned officer, soldier or sailor in the service of His Majesty, every enrolled volunteer and such officers of the Police (including officers subordinate to the Criminal Intelligence Department), Forest, Postal, Telegraph, Jail, Medical, Salt, Opium and Excise Departments, as the local Government may, by General or special order, direct. Provided that a native soldier while absent from his regiment on leave, shall be exempt only in respect of such arms and ammunition as may be covered by a pass granted to him by his commanding officer. *Explanation.*—The term "soldier" as used in this clause does not include a "reservist."	All, except— (*a*) cannon, (*b*) articles designed for torpedo service, (*c*) war-rockets, (*d*) rifle of ·303 or ·450 bore, other than rifles of such bores lawfully imported into British India, and ammunition which can be fired from the same; (*e*) machinery for the manufacture of arms or ammunition.	The arms or ammunition carried or possessed by any person herein exempted shall not exceed such quantities (if any) as— (*a*) the Government of India, or (b) a local Government in respect of the territories administered by it or subject to its control, may declare to be reasonable for him to carry or possess.	Those contained in sections 13 to 16.
(4) Every Justice of the Peace, every Deputy Collector, every officer salaried or honorary of the Judicial service of a rank not below that of a Magistrate of the third class, Munsif, or Judicial Myook, and every officer of the Public Works Department of a rank not below that of Assistant Engineer.	Ditto ...	Ditto ...	Ditto.

SCHEDULE I—*contd.*

The Table—contd.

Persons or classes of persons.	Arms and ammunition.	Provisos and restrictions.	Prohibitions and directions.
Explanation.—In the Madras Presidency the word "Munsif" applies to "District Munsifs" appointed under the Madras Civil Courts Act. 1873.			
3 (5) Every retired commissioned or gazetted native officer or non-commissioned officer of His Majesty's Indian Forces and every retired commissioned or gazetted officer of Imperial Service Troops who— (*a*) is in receipt of a pension as such, or (*b*) not being in receipt of such a pension, has been recommended for exemption by his Commanding Officer by entry recorded on his discharge certificate, and such pensioned officers of the Civil Departments as the local Government may, by general or special order, direct.	All, except— (*a*) cannon (*b*) articles designed for torpedo service, (*c*) war-rockets, (*d*) rifle of ·303 or ·450 bore other than rifles of such bores lawfully imported into British India, and ammunition which can be fired from the same; (*e*) machinery for the manufacture of arms or ammunition. Kukris . . .	The arms or ammunition carried or possessed by any person herein exempted shall not exceed such quantities (if any) as— (*a*) the Government of India, or (*b*) a local Government in respect of the territories administered by it or subject to its control may declare to be reasonable for him to carry or possess. ...	Those contained in sections 13 to 16. All
(6) Every pensioned Gurkha officer, non-commissioned officer or soldier of His Majesty's Indian Forces, residing in British India.	Such arms as his superior departmental officer may direct him to carry.	...	Those contained in sections 13 to 16.
(7) Every revenue official and postal runner in any frontier or wild district where his superior departmental officer directs him to him to carry arms on duty.	Such arms as the Superintendent of Geological Survey may direct him to possess or carry.	...	Ditto.
(8) Such subordinate officials of the Geological Survey of India as may from time to time be authorized by the Superintendent of the Geological Survey to possess or carry arms.			

SCHEDULE I—*contd.*

The Table—contd.

Persons or classes of persons.	Arms and ammunition.	Provisos and restrictions.	Prohibitions and directions.
(9) Every Consul, Consular Agent, duly accredited Vakil or Agent of any Native State in India.	All, except— (*a*) cannon, (*b*) articles designed for torpedo service, (*c*) war-rockets, (*d*) rifles of ·303 or ·450 bore, other than rifles of such bores lawfully imported into British India, and ammunition which can be fired from the same; (*e*) machinery for the manufacture of arms or ammunition.	The arms or ammunition carried or possessed by any person herein exempted shall not exceed such quantities (if any) as— (*a*) the Government of India, or (*b*) a local Government in respect of the territories administered by it or subject to its control, may declare to be reasonable for him to carry or possess.	Those contained in sections 13 to 16.
(10) The holder for the time being of the office of Diwan of Idar in the Mahi Kanta Agency, or of Private Secretary to His Highness the Maharaja of Idar.	Ditto . . .	Ditto . . .	Ditto.
(11) Maharaja Deb Shamsher Jang, Rana Bahadur, ex Prime Minister of Nepal, residing at Mussoorie.	Ditto . . .	Ditto . . .	Ditto.
(12) General Khadga Shamsher Jong, Rana Bahadur residing at Saugor.	Ditto . . .	Ditto . . .	Ditto.
4 (13) Every European or East Indian subject of His Majesty, every Armenian and every European or American who is not a natural born or naturalized subject of His Majesty, only so long as he is temporarily residing or tarvelling in India.	Ditto . . .	In addition and without prejudice to the foregoing proviso and restriction, any person possessing fire arms in Burma without license in virtue of this exemption shall annually register them—	Ditto.

SCHEDULE I—*contd.*

The Table—contd.

Persons or classes of persons.	Arms and ammunition.	Provisos and restrictions.	Prohibitions and directions.
		(*a*) where they are possessed in Rangoon, in the office of the Commissioner of Police, and (*b*) in any other case in the office of the District Magistrate, on or before such date as the local Government may, by general or special order, direct.	
(14) Every ruling Prince or Chief, and such members of the families or high officials of a ruling Prince or Chief as the local Government or Political Agents may designate, on the occasions of his or their entering or residing in British India with his or their retinues, to such numbers as may in each case be settled by the Political Agent under the special or general orders of— (*a*) the Government of India, or (*b*) the local Governments in respect of Princes or Chiefs whose political relations are with those Governments, respectively, and all officials of such Princes or Chiefs passing through British India on duty.	All, except— (*a*) cannon, (*b*) articles designed for torpedo service, (*c*) war-rockets, (*d*) rifles of ·303 or ·450 bore, other than rifles of such bores lawfully imported into British India, and ammunition which can be fired from the same; (*e*) machinery for the manufacture of arms or ammunition	This exemption shall be subject to such conditions (if any) as may be prescribed by the local Government or the Political Agent, as the case may be.	Those contained in sections 13 to 16.

SCHEDULE I—*contd.*

The Table—contd.

Persons or classes of persons.	Arms and ammunition.	Provisos and restrictions.	Prohibitions and directions.
5 (15) (*a*) Every land-holder or member of a Municipal Board or Committee, being of approved loyalty and good position and designated in this list issued in this behalf by the local Government. (*b*) Every Malikana-holder in the Malabar district of the Madras Presidency. 6 (*c*) Every person of Coorg race and every jumma tenure-holder in Coorg who, by his tenure, is liable to perform military or police duties. (*d*) Every person who holds fire-arms presented to him by the Government of Burma.	All except— (*a*) cannon, (*b*) articles designed for torpedo service, (*c*) war-rockets, (*d*) rifles of ·303 or ·450 bore, other than rifles of such bores lawfully imported into British India, and ammunition which can be fired from the same; (*e*) machinery for the manufacture of arms or ammunition.	The arms or ammunition carried or possessed by any person herein exempted shall not exceed such quantities (if any) as— (*a*) the Government of India, or (*b*) a local Government in respect of the territories administered by it or subject to its control, may declare to be reasonable for him to carry or possess.	Those contained in sections 13 to 16.
7 (16) Save in the Punjab, every head of a village, ghatwal, dighwar or other rural police officer.	Such arms as the local Government may notify to be necessary for the discharge of his police duties.		Ditto.
(17) Every subject of the Baroda or Indore State, or of any State or jagir in the Bundelkhand Agency who may transport arms or ammunition across any part of British India from one part of the territory of such State to another part of the territory of the same State under a license granted by the Resident or Assistant Resident of Baroda, or Resident at Indore or the Political Agent or his Assistant respectively.	Such arms or ammunition as may be covered by his license.		Ditto.

SCHEDULE I—*contd.*

The Table—contd.

Persons or classes of persons.	Arms and ammunition.	Provisos and restrictions.	Prohibitions and directions.
8 (18) The following persons and their retainers, namely— (*a*) the ancient Zamindars and Poligars of the Madras Presidency; and the Mahant of Tirupati, in the North Arcot district of the Madras Presidency; (*b*) the Dekkhan and Southern Mahrata Country Sardars; such of the Nehwasi Chiefs of the Khandesh District; and such members of the Talpur family of Sind as the Government of Bombay may designate; (*c*) the great Zamindars of Bengal and Eastern Bengal and Assam; (*d*) the great Sardars and Jagirdars of the Punjab; (*e*) Shan Sawbwas and other Native Chiefs in Burma; (*f*) the Zamindars of the Scheduled Districts of the Central Provinces; (*g*) such nobles and high officials of the Baroda State as the Government of India may designate; (*h*) such nobles and high officials of the Hyderabad State as the Government of India may designate:	All except— (*a*) cannon, (*b*) articles designed for torpedo service, (*c*) war-rockets, (*d*) rifles of ·303 or ·450 bore, other than rifles of such bores lawfully imported into British India, and ammunition which can be fired from the same; (*e*) machinery for the manufacture of arms or ammunition.	This exemption shall be subject to such orders as the local Government may make, regarding— (*a*) the persons to be included in this category, and (*b*) the number of retainers and arms and the quantity of ammunition to be permitted in each case, (*c*) the purposes for which such arms may be carried.	Those contained in sections 13 to 16.

SCHEDULE I—*contd.*

The Table—contd.

Persons or classes of persons.	Arms and ammunition.	Provisos and restrictions.	Prohibitions and directions.
(*i*) such officials of the Paigah Nobles and the larger jagirdars of the Hyderabad State, as may be authorized by the Resident to carry arms when travelling on duty from one part of the territory to another part of the same territory.			
(19) (*a*) The Oudh retainers of His Highness Raja Sir Jagatjit Singh, K.C.S.I., Bahadur, of Kapurthala, Raja-i-Rajagan. (*b*) The retainers of the following nobles in the United Provinces— Raja Mahendra Man Singh of Bhadawar. Raja Rup Sah of Jagamanpur. Raja Ram Singh, C.I.E., of Rampura. Raja Sardar Singh, Bahadur, of Kathera. His Highness Maharaja Sir Prabhu Narayan Singh, Bahadur, G.C.I.E. of Benares. Raja Udai Partab Singh, C.S.I., of Bhinga. 9 Raja Balwant Singh, C.I.E., of Awa. Maharaja Sir Bhagwati Parshad Singh, K.C.I.E., of Balrampur. Raja Kishen Kumar of Sahaspur Bilari. Kunwar Rukmangad Singh of Katiari. Raja Ram Pertab Singh, of Manda. Maharani Jagdumba Debi of Ajudhiya. Shahzada Basdeo Singh, residing in the Rae Bareli District.	All, except— (*a*) cannon, (*b*) articles designed for torpedo service, (*c*) war rockets, (*d*) rifles of ·303 or ·450 bore, other than rifles of such bores lawfully imported into British India, and ammunition which can be fired from the same; (*e*) machinery for the manufacture of arms or ammunition.	This exemption shall be subject to such orders as the local Government may make, regarding— (*a*) the number of retainers and arms and the quantity of ammunition to be permitted in each case, (*b*) the purposes for which such arms may be carried.	Those contained in sections 13 to 16.

SCHEDULE I—*contd.*

The Table—contd.

Persons or classes of persons.	Arms and ammunition.	Provisos and restrictions.	Prohibitions and directions.
(*c*) The retainers of— Raja Raghoji Rao of Deor in the Central Provinces. (*d*) The Prince of Arcot.			
(20) (*a*) Rajbansi and Bindraban, sons of the late Ram Bakhsh Subadar Bahadur, of the Nepal Escort, residing at Cawnpore in the United Provinces of Agra and Oudh.	The sword and dagger granted to their father for good services to the Government.		Those contained in section 15.
(*b*) The undermentioned persons belonging to the Bhavnagar State Imperial Service Lancers while temporarily residing or travelling in British India— 1. Kot Daffedar Hanubhai Ranchodji. 2. Daffedar Mangalsinh Sheoprasad. 3. Daffedar Kasalsinh Mulubha. 4. Farrier Jehangirkhan Chhotukhan. 5. Farrier Ismail Govind. 6. Farrier Shekh Abdulkhan Shekh Husen. 7. Sowar Ramprasad Matadin. 8. Sowar Kirpalsinh Badluesinh. 9. Sowar Jetubhai Kala. 10. Sowar Nathubhai Madarsinh.	The swords of honour presented to them by His Highness the Thakorsahib of Bhavnagar in recognition of their services in South Africa during the late War.		Ditto
(21) Every British officer in Staff, departmental and regimental employ, every member of a Volunteer Corps and every Warrant Officer or Staff Sergeant of a British Unit of the Army (including a Staff Sergeant or Warrant Officer who is an instructor of a Volunteer Corps).	Single barrel rifles of ·303 bore required for match-shooting purposes.	1. Only one such rifle at a time shall be imported or used by any person hereby exempted. 2. The rifle shall be sighted to a range of over 1,000 yards.	All.

SCHEDULE I—*contd.*

The Table—contd.

Persons or classes of persons.	Arms and ammunition.	Provisos and restrictions.	Prohibitions and directions.
		3. The rifle shall in the case of regimental officers, warrant officers, non-commissioned officers and Volunteers become part of the equipment of the Corps to which the owner for the time being belongs.	
		4. The owner shall, at the time of importation, produce a certificate from the Commanding Officer of the Corps, senior officer or Head of Department to which he belongs, to the effect that, in the case of regimental officers, warrant officers, non-commissioned officers and volunteers, the weapon will be brought on to the equipment ledger of the Corps, and in the case of Staff and departmental officers will be brought on to the equipment ledger of a Corps in the officer's command or office inventory of stores, and will be accounted for in the same manner as other equipment.	

SCHEDULE I—*contd.*

The Table—contd.

Persons or classes of persons.	Arms and ammunition.	Provisos and restrictions.	Prohibitions and directions.
		5. This exemption shall in the case of volunteers cease to have effect on the owner leaving the Volunteer force. Provided that, if he departs from India immediately after so leaving he may take the weapon with him. 6. Any person hereby exempted may dispose of his rifle to another person so exempted, provided that the rifle becomes part of the equipment of the corps to which the latter belongs and is accounted for as such.	
(22) Any of the undermentioned persons, not being members of trans-border tribes :— (*a*) any Baloch belonging to any organized tuman while within the limits of such tuman or any other tuman in the Dera Ghazi Khan district of the Punjab ; (*b*) armed guards accompanying sheep, goats, asses and cattle under the provisions of the Frontier Grazing Regulation, 1874 (I of 1874) ; or, (*c*) villagers residing in— (*i*) the North-West Frontier Province, or,	All arms, except rifles, pistols, revolvers and daggers.	...	Those contained in section 13.

SCHEDULE I—*concluded.*

The Table—concluded.

Persons or classes of persons.	Arms and ammunition.	Provisos and restrictions.	Prohibitions and directions.
(*ii*) the Isakhel tahsil of the Mianwali district or the Attock tahsil of the Attock district of the Punjab, pursuing raiders or members of trans-border tribes or Baloches who have committed, or attempts to commit, any offence in British India.			
(23) Any of the persons described in sub-heads (*b*) and (*c*) of entry (19).	All arms and ammunition, except rifles, pistols, revolvers, and daggers, and rifle, pistol and revolver ammunition.	...	Those contained in sections 14 and 15.

(Notes).

N.B.—Important Government Notifications are hereunder given for reference.

1.—"Cl. (1) (c)."

Home Dept. Notn. No. 2071, 29th April, 1909.

The exemption under this clause does not extend to:—Kazi Fazal Allah of Tala in Sind.

2.—"Cl. (3)."

(1) **Home Dept. Letter No. 2064, 7th June, 1905.**

A native of India holding the honorary rank of Lieutenant in the Indian Army is included within the term military forces.

(2) **Army Dept. No. 429 B, 11th Feb., 1908.**

The Government of India have been pleased to approve of Native Officers retaining fusils and smoothbore weapons purchased from the Ordnance Department which, under the regulation hitherto in force were required to be returned when no longer needed for personal use or when leaving India.

(3) **Indian Army Order No. 326, 14th June, 1909.**

To provide for closer control over the possession of private arms by Indian troops, the Government of India direct that the following rules shall be observed,

(*a*) A native soldier, while absent from his regiment, on leave, shall be exempt from the operations of certain sections of the Indian Arms Act only in respect of such arms and ammunition as may be covered by the pass granted to him by his Commanding Officer under Army Regulations, India, Vol. II.

2.—"Cl. (3)"—(Concluded).

If a soldier so absent, is found to be in possession of arms and ammunition not covered by such a pass, he will be made over to the military authorities for trial.

(*b*) Whenever a native soldier, on joining the reserve, wishes to possess arms and ammunition for his personal use, he will obtain a license, which will be issued and renewed free of license fee, by the Magistrate of the District in which he resides provided that the application is submitted through and recommended by his late Commanding Officer.

Should a Magistrate not feel justified in issuing a license to a reservist, his decision will be communicated to the Commanding Officer for such action as the latter may wish to take.

Offences under the Arms Act and Rules, committed by reservists will be dealt with under that Act by the Magistracy.

Reservists who are already in possession of arms on the authority of the passes issued to them by their respective Commanding Officers should be furnished by them with letters of recommendation for the grant of licenses by the District Magistrate.

(4) **India Army Order No. 92, 14th Feb., 1910.**

With reference to the above order, the Government of India have ruled that a native soldier on leave is restiricted to the maximum quantity of arms and ammunition prescribed by Army Regulations, India, Vol. II, paragraph 686. If the quantity covered by the pass granted by his Commanding Officer is less than the prescribed minimum, a native soldier on leave may only purchase, and dealers may only sell to him, additional arms and ammunition up to that maximum and then only with the written permission of his commanding officer. No license will be granted to a native soldier by the Magistrate or other authority invested with the power to license, for any other arms or ammunition.

See also Home Dept. Letter No. 781, 26th Feb. 1909, and Letter No. 3594-3602, 29th Sept. 1909 ; Letter No. 1063. 12th July 1895.

See further Army Regs. India Vol. II.

3.—"Cls. (3 and 5)."

(1) **Officers exempt.**

(*a*) BENGAL.

A. (1) All officers of the Northern India Salt Revenue Department of and above the rank of an Inspector serving in the administration of the Government of Bengal.

(2) All Salt Officers under the Lieutenant-Governor of Bengal.

(3) All Excise Officers actually drawing Rs. 100 or upwards.

(4) All pensioned officers of the above Department exempted before retirement —*Notn. No. 3030, dated 16th Nov. 1900 and Notn. No. 1557, J. D. 27th June 1900.*

3.—" Cls. (3 and 5)"—(Continued).

B. (1) Police Department ... Police Officers of and above the rank of Sub-Inspector.

Among pensioned officers—Inspectors of Police and officers of higher rank.

(2) Forest Department ... Forest Rangers and Officers of Superior Rank.

Among pensioned officers :—Extra Asst. Conservators of Forests and officers of higher rank.

(3) Postal Department ... All Superintendents of Post Offices: officers of higher rank: All Post Masters: Deputy Post Masters: Assistant Post Masters: Whose minimum pay is not less than Rs. 100 per mensem.

(4) Jail Department ... Officers of and above the rank of Jailor.

Notn.—Nos. 211 & 217 p. dated 14th June 1908.

(*b*) BURMA.

All Officers of Civil Police of and above the rank of Sub-Inspectors of first grade.

All Officers of the Military Police of and above the rank of Jamadar.

All Officers of the Forest Department of and above the rank of Sub-Assistant Superintendent.

All Superintendents of Jails.

All Pensioned Officers of the Provincial and subordinate Civil services under the Police and Forest Department who were before the retirement exempted by or in pursuance of para 1, cl. (3) or cl. (4) Home Dept. Notification No. 518, 6th March, 1879, by virtue of Office.

All European Officers of Postal Department.

All Superintendents and Inspectors of the Burma Excise Department.

See Judicial Department Notn. No. 314, 9th Sept., 1904.

(*c*) CENTRAL PROVINCES.

Police Department ... All Police Officers not below the rank of a Constable.

Jail Department ... All Jail Officers not below the rank of Jailor.

Excise Department ... All Excise Officers not below the rank of Inspector.

Forest Department ... Officers not below the rank of Deputy Ranger.

Foresters, Forest Muharrir and Forest Guard (in respect of swords.)

Postal Department ... Superintendents of Post Offices.

Inspectors of Post Offices.

Mail Overseers, Camp peons of Deputy Post Master Generals and Superintendents of Post Offices, Village Postmen and Chowkidars (in respect of swords).

C. C. of the C.P. Notn. No. 3986, 4th July, 1891.

" " 6931, 20th July, 1901.

3.—"Cls. (3 and 5)"—(Continued).

(*d*) COORG.

Forest Officers of and above the rank of Rangers.

Notn. No. 25, 1st Nov. 1897.

(*e*) MADRAS.

(*a*) Superintendents of Jails and Jailors.

(*b*) All Police Officers of and above the rank of Police Sub-Inspector.

(*c*) Superintendents, Inspectors of Post Offices and Mail Overseers.

(*d*) All Gazetted Officers of the Forest Department, Forest Rangers and Foresters.

(*e*) All Assistant Commissioners, Inspectors of the Salt and Abkari Department.

See G. O. No. 2014, 26th October, 1892.

All Civil pensioners who, when in service were exempt.

Mad. Govt. Notn. No. 432, dated 26th Oct. 1892.

,,	53.	,,	31st June, 1893.
,,	521,	,,	8th Nov. 1906,
,,	1774,	,,	14th Oct. 1907.

(*f*) THE PUNJAB.

Police Department ...	All Inspectors and Sub-Inspectors of Police.
Forest Department ...	Forest Rangers and Officers of superior rank.
Postal Department ...	All Superintendents of Post Offices, Post-Masters, Deputy Post masters and Assistant Post-Masters whose appointments are notified by the Director General of Post Offices in the Gazette of India and such other postal officials as may from time to time be specified by the Post Master General, Punjab, by order in writing on this behalf.
Telegraph Dept. ...	Officers of and above the rank of Telegraph Masters. *See Notn. No. 1639, 20th November, 1909.*
Jail Department ...	All Jailors, Deputy Jailors and 1st Grade Assistant Jailors.
Medical Department...	All Officers, holding the appointment of Civil Surgeon.
Salt Department ...	Officers of and above the rank of Inspectors.
Excise Department .	All Excise darogas.

N. B.—Pensions Officers.

Re: See the above Notification.

(*g*) UNITED PROVINCES OF AGRA AND OUDH.

All Native Gazetted Officers of the Opium and Telegraph Department.

All Police Officers above the rank of Head Constables, 1st Grade.

All Forest Officers of and above the rank of Ranger.

All Gazetted Post Office Officials.

All Darogas of the Jail Department.

3.—"Cls. (3 and 5)"—(Concluded).

All Officers of the Northern India, Salt Department of and above the rank of Inspector.

[*Notn. No. 2147, dated 7th July 1891.*
" " *2329,* " *14th Aug 1891.*
" " *471,* " *28th Feb 1893.*
" " *1418,* " *1st June 1893.*
" " *241,* " *19th Jan 1895.*
" " *1511,* " *2nd June 1901*]

(2) **Home Dept. Letter No. 1079, 4th Nov. 1891—U.P.G.O., 217, 28th June 1900.**

The words all pensioned Officers of the Native Army include non-commissioned officers of the Native Army and pensioned officers of the Imperial Service troops.

(3) **Home Dept. Letter No. 1502. 6th June, 1900—Home Dept. No. 1225, 3rd March. 1901.**

Pensioned Army Hospital Assistant, and Pensioned Dafadar of a Bengal Cavalry--are exempt within the meaning of cl. (5).

(4) **No. 441—VI—261, 9th Feb. 1901.**

Indian Officers holding appointment of Civil Surgeon and not being members of the Indian Medical Service are also exempt under this clause.

(No. 441—VI—261, 9th Feb. 1901.)

4.—"Cl. 13."

(1) **Home Dept. O.M. No. 17. 519—528, March. 1879.**

The words "And Europeans"—have been added after the word Americans as it seemed right that Europeans travelling in India should be zxempted just as Americans are.

(2) **Home Dept. Letter No. 778, 23rd April, 1897.**

Indo-Portuguese—as a class are not East Indians, within the meaning of this clause.

(3) **Home Dept. Letter No. 122, 13th Jan. 1908.**

To determine in what cases Americans and Europeans not being British born subjects of His Majesty, should be exempted persons, and Government of India have decided that all Americans and Europeans who are not natural born or naturalised subjects of His Majesty are exempted persons only so long as they are temporarily residing or temporarily travelling in India but they ceased to be exempted when they have settled in India or have no intention of leaving India.

(4) **Home Dept. Letter No. 606—614, 13th Feb. 1909.**

The Government of India have ruled that all Europeans who have not adopted an Indian domicile are entitled to the benefit of the exemption granted by paragraph 1, cl. (5) of the rules issued under the Act and that a person who is exempted, under rule (1), cl. (3) in his capacity as a volunteer does not forfeit that exemption by reason of the fact that he may not be eligible for exemption under the provisions of rule (1) (5) of the rules under the Act.

5.—"Cl. 15. (a)"

Notn. No. 21, 24th June, 1899.

The members of the Mercara Municipal Committee and the *vice* President of the Virajendrapet Municipal Committee for the time being are exempt, provided that except where otherwise expressly stated, the arms or ammunition carried or possessed by such persons shall be for their own personal use and the latter shall not exceed the following quantities which the Chief Commissioner is pleased to declare to be reasonable for them to carry or possess :—

(*a*) Black powder to an amount not exceeding 20 lbs. or Schultz's or sporting powder other than black to an amount not exceeding 10 lbs.

(*b*) Loaded cartridges or empty cartridge cases not exceeding 500 in number, with the necessary implements for loading, etc ;

(*c*) Percussion caps not exceeding 2,000 in number, and

(*d*) Shots, bullets, flints and wads in such quantities as are ordinarily required for sporting purposes,

Provided that there shall not be kept in the same house or premises more than the quantities herein specified.

6.—"Cl. 15 (c)"

Notn. No. 29, 10th November, 1897.

The following are the descriptions or quantities of ammunition which persons of Coorg race and Jamma tenure-holders liable by their tenures for police and military duties, are permitted to possess for their private use :—

For the quantities specified, see Notn. No. 21, 24th June, 1899, *supra*.

7.—"Cl. 16."

Bombay Govt. Notn. No. 4568, 8th August 1887.

Throughout the territories subject to the Government of Bombay other than Sind, Aden and Perim, swords are the arms necessary to the village police for the performance of their duties, in respect of which they are exempted from the operation of all prohibitions and directions contained in Ss. 13, 14, 15 and 16 of the Indian Arms Act, 1878.

8.—"Cl. 18."

Home Dept. Notn. No. 1310, 8th June, 1906.

The exemption under this clause does not extend to :—

M. R. Ry. S. K. Ramasami Kamayya Naikar Avargal in the Madras Presidency.

9.—"Cl. 19 (b)"

NOTIFICATION.

PUBLIC.

Simla, the 27th August, 1909.

No. 3268.—In execrise of the powers conferred by section 27 of the Indian Arms Act (XI of 1878), the Governor-General in Council is pleased to direct that the name of Raja Surajpal Singh be substituted *for* that of his late father Raja Balwant Singh, C.I.E. of Awa, in clause (19) (*b*) of Schedule I of the Indian Arms Rules, 1909.

SCHEDULE II.

Rule 3.

ARMS, AMMUNITION AND MILITARY STORES EXCLUDED.

2. Within the areas specified in the first column of the subjoined table the arms, ammunition and military stores described in the second column are exempted from the operation of such prohibitions and directions contained in the Act as are indicated in the third column.

The Table.

Area.	Arms or ammunition.	Prohibitions and directions.
British India	Bows and arrows;	All.
	Uniform swords and dirks manufactured in Europe of recognized military or official patterns, when possessed by, or intended to be supplied to, persons entitled to wear them as part of their uniforms;	Do.
	Swords imported for presentation as Army or Volunteer prizes; and	Do.
	Ornamental arms of an obsolete pattern possessing only antiquarian value, masonic Swords and theatrical and fancy dress swords, provided that they are virtually useless for offensive and defensive purposes;	Do.
	Toy cannon weighing less than 56 lbs. and having— (a) a calibre of less than one inch, (b) a length of bore of less than 24 inches, and (c) the interior of the bore unrifled.	Do.
	Gunwads and wire-cartridges.	Those contained in section 6.
	All arms, ammunition and military stores covered by any license or exemption granted in Berar under the law for the time being in force relating to arms, ammunition and military stores; provided that the conditions of such license or exemption are observed.	All.

SCHEDULE II—*contd.*

The Table—contd.

Area.	Arms or ammunition.	Prohibitions and directions.
British India, excepting Burma, Aden, and all districts on the external land-frontier of British India.	(1) Lead required *bonâ fide* for industrial and manufacturing purposes (other than the manufacture of bullets and bird shot) up to any quantity.	All.
	(2) Leaden bullets and bird shot in quantity not exceeding such limits as the local Government may fix.	Do.
	(3) Saltpetre.	Do.
	(4) Sulphur in quantities not exceeding such limits as the local Government may fix.	Do.
Burma, Aden and all districts on the external land-frontier of British India.	Lead required *bonâ fide* for industrial and manufacturing purposes (other than the manufacture of bullets and bird shot) in quantities not exceeding such limits as the local Government may fix.	Do.
Burma	Sulphur, not exceeding one seer.	Do.
Aden and all districts on the external land-frontier of British India.	Sulphur, not exceeding ten seers.	Do.
Burma and all districts on the external land-frontier of British India.	Saltpetre required for medicinal or goldsmith's purposes in quantities not exceeding 10 lbs.	Do.
The Madras Presidency.	Spears.	Do.
The Bombay Presidency—		
(*a*) generally,	Spears and hunting knives.	Do.
(*b*) in any district, or part of a district, which the Government may declare to come within this exemption.	Katyars used in Mahratta marriage processions.	Do.
The province of Bengal—		
(*a*) generally,	Kukris and daos.	Do.
(*b*) in the district of Angul,	Swords.	Do.
(*c*) in the districts of Shahabad, Patna and Gaya.	Swords carried by tahsildars or peons when employed in the collection, custody or remittance to Treasuries of water-rates.	Do

SCHEDULE II—*concluded.*

The Table—concluded.

Area.	Arms or ammunition.	Prohibitions and directions.
(*d*) in any district, or part of a district, which the local Government may declare to come within this exemption.	Spears.	All.
The United Provinces of Agra and Oudh—		
(*a*) in the Kumaon division and the Dehra Dun district,	Kukris.	Do
(*b*) in any district, or part of a district, which the local Government may declare to come within this exemption.	Spears.	Do.
Burma—		
(*a*) generally,	Dahs intended exclusively for domestic, agricultural or industrial purposes.	Do.
(*b*) in the Arakhan Hill Tracts.	Spears.	Do.
The province of Eastern Bengal and Assam—		
(*a*) generally,	Kukris.	Do.
(*b*) in any district or part of a district, which the local Government may declare to come within this exemption,	Spears.	Do.
(*c*) in the Garo Hills and the Cachar, Lushai Hills, Naga Hills and Khasi and Jantia Hills districts.	Swords and daggers.	Do.
The Central Provinces.	Spears and hunting knives.	Do.
Coorg.	Ditto.	Do.

SCHEDULE III.

ARMS, AMMUNITION AND MILITARY STORES EXEMPTED.

(RULE 3.)

3. The arms, ammunition and military stores described in the subjoined table are exempted from the operation of the prohibitions and directions contained in section 6.

The Table.

I. Any arms, ammunition or military stores brought into and landed in bond at or brought into any port in British India and declared under manifest to be consignments for any port to which export from the port of shipment is permitted under the rules for the time being in force.

II. Any arms, ammunition or military stores brought into the port of Aden and consigned, whether with or without transhipment, from any other British port to any other port, other than a port on the eastern sea-board of Africa, to which the shipment of arms is for the time being forbidden by an order signed by the Resident at Aden.

SCHEDULE IV.

(Rule 3.)

PARTS OF BRITISH INDIA WITHDRAWN.

4. The areas specified in the first column of the subjoined table are withdrawn, in respect of the arms and ammunition described in the second column, from such prohibitions and directions contained in the Act as are indicated in the third column.

The Table.

Areas.	Arms and ammunition.	Prohibitions and directions.
(1) All Scheduled Districts in the Madras Presidency.	All, except rifled arms and cannon.	All, except those contained in sections 12 and 25.
(2) The Chittagong Hill Tracts of Eastern Bengal and Assam.	All	Those contained in sections 13 and 14.
(3) Ajmer-Merwara and those parts of the Mirzapur district in the United Provinces of Agra and Oudh which are situated on the right bank of the river Sone.	All, except cannon . .	Do.
(4) The lands ceded to the British Government by His Highness the Nawab of Bahawulpur, which are, or may hereafter be, occupied by the North-Western Railway (including the lands occupied by stations, by out-buildings and for other railway purposes) and lie between the stations of Bahawalpur and Walhar.	All	Those contained in sections 14 to 16. Provided that a person who refuses or omits to comply with any regulation or rule of the Railway for the time being in force relating to the custody of arms while in passenger trains shall not be entitled to the benefit of this exemption.
(5) The lands lying within the State of His Highness the Nawab of Bahawalpur which are, or may hereafter be, occupied by the Southern Punjab Railway (including the lands occupied by stations, by out-buildings and for other railway purposes) and so much of the said lands as lie between the stations of Samasata and Shujawalpur.	All	Do.

SCHEDULE IV—*contd.*

The Table—contd.

Areas.	Arms and ammunition.	Prohibitions and directions.
(6) The lands which are, or may hereafter be, occupied by the Rajputana Malwa Railway in the Nimar district of the Central Provinces, (including the lands occupied as stations, outbuildings and for other railway purposes) between the stations of Mortakka and Nimar Kheri.	All	Provided that a person who refuses or omits to comply with any regulation or rule of the Railway for the time being in force relating to the custody of arms while in passengers trains shall not be entitled to the benefit of this exemption.
(7) The following parts of the Punjab, namely :— (*a*) the parganas of Lahaul and Spiti ; (*b*) all parts, other than any area included in a Municipality of the Dera Ghazi Khan district.	All (not being carried by members of trans-border tribes) except rifles, pistols, revolvers and daggers.	Those contained in section 13.
(8) The following parts of the Punjab, namely :— (*a*) The parganas of Lahaul and Spiti. (*b*) The Dehra Ghazi Khan district.	All (not being possessed by members of trans-border tribes) except rifles, pistols, revolvers and daggers, and rifle, pistol and revolver ammunition.	Those contained in sections 14 and 15.
(9) The following parts of the North-West Frontier Province, namely : – (*a*) All parts other than any area included in a Cantonment or Municipality of the Peshawar, Kohat, Bannu and Dehra Ismail Khan districts. (*b*) The jagir of the Nawab of Amb, known as the feudal Tanawal (including the Phulera Jagir).	All (not being carried by members of trans-border tribes) except rifles, pistols, revolvers and daggers.	Those contained in section 13.

SCHEDULE IV—*concluded.*

The Table—concluded.

Areas.	Arms and Ammunition.	Prohibitions and directions.
(c) The villages, other than the Municipality of Baffa, enumerated in the schedule to the Notification of the Government of the Punjab in the Home Department, No. 2460, dated the 3rd July 1879.		
(10) The following parts of the North-West Frontier Province, namely:— The whole of the North-West Frontier Province with the exception of those villages of the Hazara District which are not enumerated in the schedule to the Notification of the Government of the Punjab in the Home Department, No. 2460, dated the 3rd July 1879.	All (not being possessed by members of trans-border tribes) except rifles, pistols, revolvers and daggers, and rifle, pistol and revolver ammunition.	Those contained in sections 14 and 15.

SCHEDULE V.

OFFICERS EMPOWERED TO GRANT LICENSES FOR EXPORT BY SEA TO PORTS IN NATIVE STATES, OR TO FOREIGN TERRITORY.

(Rule 17).

1 Officers.	2 Ports from which they may grant licenses to export.	3 Ports to which they may grant licenses to export.	4 Conditions,
1 The Chief Secretary to the Government of Madras.	Any port in British India.	Ports in Native States or foreign settlements within the political jurisdiction of the Government of Madras.	
(2) The Secretary to the Government of Bombay in the Political Department.	Do. ...	Ports in Native States or foreign settlements within the political jurisdiction of the Government of Bombay, or to ports within the territories of His Highness the Gaekwar of Baroda.	

SCHEDULE V—(*concluded*).

(RULE 17)—(*concluded*).

1 Officers.	2 Ports from which they may grant licenses to export.	3 Ports to which they may grant licenses to export.	4 Conditions.
		Ports within the political jurisdiction of the Political Resident in the Persian Gulf.	
		Any ports on the coast of Africa.	
		Ports within the political jurisdiction of the Political Resident in Turkish Arabia.	For sporting shot guns, and sporting ammunition only, not intended for sale or for military purposes, but for the private use of the consignee.
(3) The Commissioner in Sind	Karachi ...	Ports within the territory of His Highness the Rao of Kutch.	.....
		Ports within the political jurisdiction of the Political Resident in the Persian Gulf.	
		Ports within the political jurisdiction of the Political Resident in Turkish Arabia.	For sporting shot guns, and sporting ammunition only, not intended for sale or for military purposes, but for the private use of the consignee.
(4) The Political Resident at Aden.	Aden ...	Any port on the coast of Africa or Arabia (other than a port on the latter coast which is within the political jurisdiction of the Political Resident in Turkish Arabia).	.....
		Any port on the coast of Arabia which is within the political jurisdiction of the Political Resident in Turkish Arabia.	For sporting shot guns, and sporting ammunition only, not intended for sale or for military purposes, but for the private use of the consignee.
(5) The Agent to the Governor, Kathiawar, and the Political Agent, Kutch.	Bombay and Karachi.	Any port in the Native States under their political charge.	

SCHEDULE VI.

OFFICERS EMPOWERED TO GRANT LICENSES FOR EXPORT BY LAND OR RIVER TO ANY PLACE BEYOND THE FRONTIER OF BRITISH INDIA.

(Rule 18).

1 Officers.	2 Place.	3 Conditions.
(1) A Secretary to the Government of :— (*a*) Madras. (*b*) Bombay. (*c*) Bengal.	Any Native State ...	For the export of ammunition intended solely for the use of a public railway or other public work.
(2) The Commissioner of Police in Madras.	Any of the French Settlements in the Madras Presidency.	To persons who would be exempted in British India from the ordinary prohibition of the Arms Act and subject to the following conditions, so far as those conditions apply to the circumstances of the case :— (*a*) The consignment for export must consist only of arms and ammunition in reasonable quantities and for personal use. (*b*) The consignee must belong to one of the classes of persons mentioned in schedule I of these rules. (*c*) The Commissioner will keep a list of such licenses.
(3) The Commissioner of Police in :— (*a*) Madras. (*b*) Bombay. (4) The Deputy Commissioner of Police in Calcutta.	Any Native State ...	Subject to the conditions specified below, namely,— (*a*) The consignment for export must consist only of arms and ammunition in reasonable quantities and for personal use. (*b*) The consignee must belong to one of the classes of persons mentioned in schedule I of these rules. (*c*) The Commissioner or Deputy Commissioner will keep a list of such licenses.

SCHEDULE VI—*contd.*

(Rule 18)—*contd.*

1 Officers.	2 Place.	3 Conditions.
		(*d*) No such officer may grant a license for the export to a Native State of any arms of the kind specified in Rule 8, sub-rule (1) (*a*) and (*b*) as modified by clause (2), unless such arms have been lawfully imported into British India, and are required for the personal use of persons of the classes mentioned in Schedule I of these Rules.
(5) The District Magistrate of Malabar.	Mahe	.....
(6) The Secretary to the Government of Bombay in the Political Department.	Portuguese India ...	.....
(7) (*a*) The Chief Secretary to the Government of Fort St. George.	Pondicherry and the other French Settlements in the Madras Presidency.	.....
(*b*) The Chief Secretary to the Government of Bengal.	Chandernagore ...	.....
(8) The District Magistrate of Meerut.	Any Native State ...	For the export of ammunition only to Native States; and for the export of arms and ammunition to Kurram, Chitral and Waziristan, subject to the following conditions:—
(9) The District Magistrate of Meerut.	Kurram, Chitral and Waziristan.	(*a*) The consignment for export must consist only of $\frac{\text{sporting ammunition}}{\text{sporting arms and ammunition}}$ in reasonable quantities for the personal use of the consignee. (*b*) The consignee must belong to one of the classes of persons mentioned in schedule I of these rules. (*c*) The Magistrate should keep a list of all licenses issued by him.

SCHEDULE VI—*contd.*

(Rule 18)—*contd.*

1 Officers.	2 Place.	3 Conditions.
		(*d*) Copies of licenses covering consignments to States in Central India or Rajputana should be sent to the Agents to the Governor-General in Central India and Rajputana, respectively. In the case of Chitral, when the ammunition is to be exported *via* Peshawar, the Magistrate should send a copy of the license to the Political Agent for Dir, Swat and Chitral for communication, when necessary, to the Assistant Political Agent in Chitral. If the consignment is forwarded *via* Kashmir, a copy of the license should be sent to the Resident. In the case of Waziristan, the Magistrate should refer to the Political Agent, Tochi, or the Political Agent, Wana, according as the consignment is for Tochi or for elsewhere in Waziristan.
(10) The District Magistrate of Rawalpindi.	Kashmir... ...	Subject to the following conditions :— (*a*) The consignment for export must consist only of sporting ammunition in reasonable quantities for the personal use of the consignee. (*b*) The consignee must belong to one of the classes of persons mentioned in Schedule I of these rules. (*c*) The Magistrate should keep a list of all licenses issued by him.
(11) (*a*) The Residents in :— (1) Hyderabad, (2) Mysore, (3) Baroda, (4) Nepal and (5) Kashmir.	Native States or territory under their political charge.	(*a*) no license shall be granted for the export of— (*i*) cannon ; or (*ii*) military stores of any kind other than sulphur ; or

SCHEDULE VI—*contd.*

(Rule 18)—*contd.*

1 Officers.	2 Place.	3 Conditions.
		(*iii*) save as hereinafter provided, rifles of the ·303 or of ·450 bore ; or (*iv*) save as hereinafter provided, balled ammunition which can be fired from rifles of the bores specified in sub-head (*iii*).
(*b*) The Agents to the Governor General in :— (1) Baluchistan, (2) North-WestFrontier Province.		(*b*) licenses for the export of rifles of the bores there specified may be granted to persons of the classes mentioned in Schedule I, subject to the condition that the rifles have been lawfully imported into British India ;
(*c*) All Political Officers in :— (1) Rajputana and (2) Central India.		(*c*) licenses for the export of cartridges of the nature there specified may be granted to persons of the classes mentioned in Schedule I subject to the conditions that the number of such cartridges does not exceed two hundred in any one year and that they are for the personal use of the licensees.
(*d*) The Commissioner of Ajmer-Merwara. (*e*) The Commissioner in Sind. 1 (*f*) The Political Agents in :— (1) Kathiawar, (2) Kolhapur. (3) the Southern Maratha Country, (4) Kutch, (5) Rewa Kantha, (6) Mahi Kantha, and (7) Savantvadi. (*g*) The Political Superintendent, Palanpur. (*h*) All Political Officers in the Punjab. (*i*) The Political Agent in Hill Tippera.	Native States or territory under their political charge.	

SCHEDULE VI—*concluded.*

(Rule 18)—*concluded.*

1 Officers.	2 Place.	3 Conditions.
(*j*) The Political Agent, Orissa Feudatory States. (*k*) The Commissioner of Chota Nagpur. (*l*) The Resident in Travancore and Cochin. (*m*) The Politcal Agents for :— (1) Pudukota, (2) Banganapalle and (3) Sandur. (*n*) The Political Agents in :— (1) Quetta-Pishin, (2) Sibi and (3) Kalat. (*o*) The Collectors and Political Agents :— (1) Surat, (2) Satara, (3) Thana (4) Kolaba, (5) Dharwar, (6) Kaira (7) Sholapur (8) Poona, (9) Nasik, (10) Bijapur and (11) Sukkur. (*p*) The Political Agent in Manipur. (*q*) The Deputy Commissioner in the Khasi and Jaintia Hills. (*r*) The Political Officer in Sikkim, Gangtok. (*s*) All Political Agents and Deputy Commissioners in the North West Frontier Province.		
(12) The Secretary to the Government of Bombay in the Political Department.	Any place within the political Jurisdiction of His Britannic Majesty's Consul General and Agent of the Government of India in Khorasan or of His Britannic Majesty's Consul for Seistan and Kain, or of His Britannic Majesty's Consul at Turbat-i-Haidari.	

(Note).

1.—"cl. 11 (F)."

Public.

SIMLA, THE 1ST OCTOBER, 1909.

No. 3677.—In exercise of the powers conferred by S. 17 of the Indian Arms Act, 1878 (XI of 1878), the Governor-General-in-Council is pleased to make the following amendment to the Indian Arms Rules, 1909.

Schedule VI, *cl. 11 (f)*, substitute the following revised clause.

The Agent to the Governor Kathiawar, and the Political Agents in (1) Kolhapur, (2) the Southern Maharatta Country, (3) Kutch, (5) Rawa Kantha, (5) Mahi Kantha, and (6) Savantvadi."

SCHEDULE VII.

[RULES 35 AND 39.]

FORM No. I.

[RULES 6, 21 AND 25.]

License for the $\frac{\textit{import}}{\textit{transport}}$ *of cannon, articles designed for torpedo service, war-rockets or* $\textit{possession}$ *machinery for the manufacture of arms or ammunition.*

Name, description and residence of licensee and agent (if any).	Number of packages.	Description, with specification of calibre of cannon or other articles.	Number of articles.	COLUMNS TO BE FILLED UP IN CASES OF IMPORT OR TRANSPORT.			Period for which the license is valid.	Use to which the articles are to be put.
				Place of despatch and route.	Place of destination.	Name, description and residence of consignee.		
							From the ——— to the ——— ———19 .	

The ——— of ——— ———19 .

Date on which, in cases of import or transport, a copy is sent to the ———Commissioner of Police,———, Magistrate of the———district.

Seal

(Signature.)

Secy. to the Govt. of India, $\frac{\textit{Home}}{\textit{Foreign}}$ *Department.*

The ——— *of* ——— 19 .

Conditions.

1. This license is granted subject to all the provisions of the Indian Arms Act, 1878 (XI of 1878), and of the Indian Arms Rules, 1909.

2. In cases of import or transport—

(*a*) bulk shall not be broken before the articles reach the place of destination; and

(*b*) the articles shall be delivered only to a person lawfully entitled to receive them.

3. In cases of import by land or river or of transport, an account of the contents of each package shall be legibly written thereon.

4. In cases of transport by rail, each package shall be marked with the word "Cannon," or as the case may be, in such a manner as to be readily recognizable by the railway authorities.

SCHEDULE VII—*contd.*

FORM No. II.

[RULES 9 AND 10.]

FEE—

(*a*) where granted under rule 9 (1) (*d*), FREE OF ALL FEE.

(*b*) where granted under rule 10, ONE RUPEE IN STAMPS; or

(*c*) in any other case, TEN RUPEES IN STAMPS.

License for the import of arms, ammunition or military stores into the port of———

Name, description and residence of licensee and agent (if any).	Number of packages.	ARMS.		AMMUNITION OR MILITARY STORES.		Purpose for which required.	Value of the firearms per piece.	Place where articles are to be deposited or to which they are to be despatched.	Period for which the license is valid.
		Description.	Number.	Description.	Weight in seers or number.				
									From the——— ——— to the ———19 .

(Signature.)

———

The———of———

———

———19 .

Seal

Commissioner of Police.———

———

Magistrate of the——— *district.*

———

Secy. to the Govt. of Madras.

Conditions.

1. This license is granted subject to all the provisions of the Indian Arms Act, 1878 (XI of 1878), and the Indian Arms Rules 1909.

2. An account of the contents of each package shall be legibly written thereon.

3. The articles shall be either—

(*a*) deposited, at Aden in such Government ware-house as the Resident may from time to time appoint in this behalf, and elsewhere in a ware-house—

(i) appointed under section 15 of the Sea Customs Act, 1878 (VIII of 1878), or

(ii) licensed under section 16 of the said Act and sanctioned under section 7 of the Indian Arms Act, 1878, or

(*b*) forthwith despatched to their place of destination under a separate license, where such place is situated outside the port of import, for transport or export by land.

SCHEDULE VII—*contd.*

FORM No. III.

[RULE 11].

FEE—

(*a*) where granted under rule 11 (1) FIVE RUPEES IN STAMPS;

(*b*) where granted under rule 11 (2) FREE OF ALL FEE.

License for the import of arms, ammunition or military stores by land or river, otherwise than into Ajmer-Merwara.

Name, description and residence of licensee and agent (if any).	Number of packages.	ARMS.		AMMUNITION OR MILITARY STORES.		Place of despatch and route.	Purpose for which required.	Place of destination.	Name, description and residence of consignee.	Period for which the license is valid.
		Description.	Number.	Description.	Weight in seers or number.					
										From the———— ———— to the———— ————19 .

(Signature.)

Seal

Commissioner of Police,————————

Magistrate of the ————————*district*

Political Agent for the————————*State.*

The ———— of ———— ————19 . { Date on which a copy is sent to the *Political Agent for the*——*State* [*rule 11 (3)*]. *Magistrate of the*——*district* [*rule 11 (4)*]. *Station Master at the*——*Station* [*rule 11 (5)*].

The————*19* .

Conditions.

1. This license is granted subject to all the provisions of the Indian Arms Act, 1878 (XI of 1878), and of the Indian Arms Rules, 1909.

2. The articles shall not be conveyed by any route other than that specified in column 7; and bulk shall not be broken, nor shall the consignment be stopped, before the articles reach the place of destination.

3. An account of the contents of each package shall be legibly written thereon; and, where the articles are conveyed by rail, each package shall be marked with the word or expression "Arms," "Ammunition" or "Military Stores," as the case may be, so as to be readily recognizable by the railway authorities.

SCHEDULE VII—*contd.*

FORM No. IV.

[RULE 12.]

FEE—

FIVE RUPEES IN STAMPS.

License for the import of arms, ammunition or military stores into Ajmer-Merwara.

Name, description and residence of licensee and agent (if any).	Number of packages.	ARMS.		AMMUNITION OF MILITARY STORES.		Place of despatch and route.	Purpose for which required.	Place of destination.	Name, description and residence of consignee.	Period for which the license is valid.
		Description.	Number.	Description.	Weight in seers or number.					
										From the———— ———— to the———— ————19 .

(Signature.)

Secy. to the Govt. of India, Foreign Dept.
Officer specially empowered under rule 12 (1)(c).

The ———— of———— ——— ——19 . { Date on which a copy is sent to the Commissioner of Ajmer-Merwara [r. 12 (2)]. Station Master at the——Railway Station [r. 12 (3)].

The————19 .

Conditions.

1. This license is granted subject to all the provisions of the Indian Arms Act, 1878 (XI of 1878), and of the Indian Arms Rules, 1909.

2. The articles shall not be conveyed by any route other than that specified in column 7; and bulk shall not be broken nor shall the consignment be stopped, before the articles reach the place of destination.

3. An account of the contents of each package shall be legibly written thereon; and where the articles are conveyed by rail, each package shall be marked with the word or expression "Arms" "Ammunition" or "Military Stores," as the case may be, so as to be readily recognizable by the

SCHEDULE VII—*contd.*

FORM No. V.

[RULE 16.]

FEE—

(*a*) where granted under rule 16 (*2*) (*a*) *to* (*d*) TEN RUPEES, or in the case referred to in rule 39 (*2*), ONE RUPEE IN STAMPS ;

(*b*) where granted under 16 (*2*) (*e*), FREE OF ALL FEE.

License for the export by sea of arms, ammunition or military stores from the port of_____to the port of_____ .

Name, description and residence of licensee and agent (if any).	Number of packages.	ARMS.		AMMUNITION AND MILITARY STORES.		Port to which consignment is to be despatched.	Period for which the license is valid.
		Description.	Number.	Description.	Weight in seers or number.		
							From the _____ _____ to the _____ _____ 19 .

*The*_____ *of* _____ _____ *19* . { Date on which the consent of the Commissioner of Police, _____ / Magistrate of the _____ district. is obtained [r. 33 (1)].

The _____ *of* _____ _____ *19* . { Date on which a copy is sent to the Commissioner of Police, _____ / Magistrate of the _____ district [r. 16 (4)].

Seal (Signature.)

Commissioner of Police,
*Magistrate of the*_____

*The*_____ *19* .

Conditions.

1. This license is granted subject to all the provisions of the Indian Arms Act, 1878 (XI of 1878), and the Indian Arms Rules, 1909.

2. Where the consignment is to be despatched to an Indian port the license shall not be valid for export to any port other than that entered in column 7.

SCHEDULE VII—*contd.*

FORM No. VI.

[RULE 17].

FEE—FIVE RUPEES IN STAMPS.

License for the export by sea of arms (other than cannon or rifles falling within the restriction imposed by rule 15), ammunition or military stores from the port of to the port of .

Name, description and residence of licensee and agent (if any).	Number of packages.	ARMS.		AMMUNITION OR MILITARY STORES.		Place of despatch and route.	Purpose for which required.	Place of destination.	Name, description and residence of consignee.	Period for which the license is valid.
		Description.	Number.	Description.	Weight in seers or number.					
										From the ———— ———— to the ———— ————19 .

(Signature.)

The ————————*19* .

Secretary to the Government of India, Foreign Dept.
Officer specially empowered under rule 17.

Conditions.

1. This license is granted subject to all the provisions of the Indian Arms Act, 1878 (XI of 1878, and of the Indian Arms Rules, 1909.

2. The articles shall not be conveyed by any route other than that specified in column 7; and bulk shall not be broken, or the consignment stopped, before the articles reach the place of destination.

3. An account of the contents of each package shall be legibly written thereon; and, where the articles are conveyed by rail, each package shall be marked with the word or expression "Arms" "Ammunition" or "Military Stores," as the case may be, so as to be readily recognizable by the

SCHEDULE VII—*contd.*

FORM No. VII.

[RULE 18.]

FEE—FIVE RUPEES IN STAMPS unless remitted or reduced under rule 39 (5).

License for the export by land or river of—

- *arms, ammunition or military stores to in the State.*
- *arms (other than cannon), ammunition or military stores out of the district of Ajmer-Merwara.*
- *arms (other than cannon), ammunition or military stores to the State in the political charge of the Government of .*

Name, description and residence of licensee and agent (if any).	Number of packages.	Arms.		Ammunition or Military Stores.		Place of despatch and route.	Purpose for which required.	Place of destination.	Name and residence of consignee.	Period for which the license is valid.
		Description.	Number.	Description.	Weight in seers or number.					
										From the——— To the——— ———19 .

The ——— of ——— ———19 . Date on which the consent of the Political Agent for the ——State / Commissioner of Police, ——— / Magistrate of the ——District is obtained [r. 33 (1)].

(Signature.)

The ——— of ——— ———19 . Date on which a copy is sent to the Political Agent for the——State [r.18(3)] / Magistrate of the——District [r. 18 (4)] / Commissioner of Police,——[r.18 (5)(*a*)] / Magistrate of the——District [r.18(5)(*b*)] / Station master at the——Ry. Station [r. 18 (6).]

Secy. to the Govt. of India, Foreign Dept. Officer specially empowered under rule 18.

Secy. to the Govt. of ——— Chief Commissioner.

The———19 .

Conditions.

1. This license is granted subject to all the provisions of the Indian Arms Act, 1878 (XI of 1878), and of the Indian Arms Rules, 1909.

2. The articles shall not be conveyed by any route other than that specified in column 7; and bulk shall not be broken, nor shall the consignment be stopped before the articles reach the place of destination.

3. An account of the contents of each package shall be legibly written thereon; and, where the articles are conveyed by rail, each package shall be marked with the word or expression "Arms," "ammunition" or "Military Stores," as the case may be, so as to be readily recognizable by the railway authorities.

SCHEDULE VII—*contd.*

FORM No. VIII.

[RULE 22.]

FEE—TEN RUPEES IN STAMPS.

License for the transport of arms, ammunition or military stores.

Name, description and residence of licensee and agent (if any) authorized for the purpose of this consignment.	Licensee's place of business, if any.	Number of packages.	ARMS.		AMMUNITION OR MILITARY STORES.		Place of despatch, route and mode of transit.	Place of destination.	Name, description and residence of consignee.	Period for which the license is valid.
			Description.	Number.	Description.	Weight in seers or number.				
										From the ——— to the ——— ——— 19 .

The———
of———
———19 .

Date on which the consent of the Commissioner of Police,— ——— Magistrate of the———District is obtained [r. 33 (1)].

The———
of———
———19 .

Date on which a copy is sent to Comsr. of Police——[r. 22(2)(*a*)]. Magte. of the——Dis. [r.22(2)(*b*)]. Magistrate of———[r. 22 (3)].

The——— 19 .

Seal

(Signature.)

Commissioner of Police,
Magistrate of the— — district,
Resident
Assistant Resident in Baroda.

Conditions.

1. This license is granted subject to all the provisions of the Indian Arms Act, 1878 (XI of 1878), and the Indian Arms Rules, 1909.

2. The articles shall not be conveyed by any route other than that specified in column 7 ; and bulk shall not be broken, nor shall the consignment be stopped, before the articles reach the place of destination.

3. An account of the contents of each package shall be legibly written thereon ; and where the articles are conveyed by rail, each package shall be marked with the word or expression "Arms," "Ammunition" or "Military Stores," as the case may be, so as to be readily recognizable by the railway authorities.

4. The articles shall be delivered only to a person lawfully entitled to receive them.

SCHEDULE VII—*continued.*

FORM No. IX.

[RULE 32 (1).]

FREE OF ALL FEE.

License for the possession and transport of gunpowder, fuses, dynamite, blasting gelatine and detonating caps required in good faith for blasting purposes.

Name, description and residence of licensee and agent (if any).	Nature and quantity of explosive.	District or place in which the possession of the explosive is permitted under this license.	Period for which the explosive may be possessed in such district or place.	TO BE FILLED UP IN CASES OF TRANSPORT.		
				Place of despatch, route and mode of transit.	Period within which the transit must be completed.	Place of destination and name of consignee.

Date.

(Signature.)

Seal

Commissioner of Police, ——————
Magistrate of the ——————*district.*

Conditions.

1. This license is granted subject to all the provisions of the Indian Arms Act, 1878 (XI of 1878), and of the Indian Arms Rules, 1909.

2. It covers only the persons named, and the quantity of explosive material specified therein.

3. If the explosive is not intended for transport, the license extends only to the district or place specified therein.

4. If the explosive is intended for transport, then, before it may be transported, an account of the contents of each package shall be legibly written thereon; and, where the explosive is transported by rail, each package shall be marked with the word or expression "Gunpowder," "Fuses," "Dynamite", "Blasting Gelatine" or "Detonating Caps," as the case may be, so as to be readily recognizable by the railway authorities.

5. The explosive shall not be conveyed by any route other than that specified in column 5; and the period of transit shall not exceed that specified in column 6.

6. Bulk shall not be broken before the explosive reaches its place or destination, as specified in column 7.

7. A person in charge of any cart containing explosive material transported under a license granted under rule 32 (1) shall not smoke or permit smoking on or dangerously near such cart.

SCHEDULE VII—*continued.*

FORM No. X.

[RULE 32 (2).]

FREE OF ALL FEE.

General license to transport blasting material, applicable only to dealers in explosives contractors, and mining-agents.

A general license is hereby granted to _____ to transport from _____ to _____ * _____ ordered by the consignee in good faith for blasting purposes.

This license shall continue in force till the _____ 19 .

(Signature.)

The _____ *of* _____ _____ 19 . { Date on which the consent of the Commissioner of Police / Magistrate of the _____ district is obtained [r. 33 (1)].

Seal

Commissioner of Police, Magistrate of the district.

The _____ *19* .

* Here enter nature and quantity of explosive material to be transported.

Conditions.

1. This license is granted subject to all the provisions of the Indian Arms Act, 1878 (XI of 1878), and the Indian Arms Rules, 1909.

2. The license shall cover only the nature and quantity of explosive material entered therein.

3. Bulk shall not be broken before the material reaches the place of destination ; nor shall the material be taken from or to any place other than the places specified in the license.

4. The licensee and the consignee shall take out licenses for the possession of explosives under the Indian Explosives Act, 1884 (IV of 1884).

5. The rules to regulate the manner of transport of explosives published with the Notification of Government of India in the Department of Commerce and Industry, No. 4555-4, dated the 31st May 1907, shall be duly observed.

6. Within twenty-four hours of the despatch of each consignment full information regarding the nature, quantity and place of destination thereof shall be furnished by the licensee to the authority granting the license and also—

(*a*) where the material is consigned to a Presidency-town, to the Commissioner of Police, or

(*b*) where it is consigned to any other place, the Magistrate of the district in which such place is situated.

7. The licensee shall, with each consignment of material conveyed by cart under cover of his license, issue a pass in the form appended hereto, specifying the places from and to which the material is to be conveyed and the quantity of the material covered by it.

Pass.

[*Condition 7.*]

Pass to be granted by the holder of general license no. *for the transport by cart of blasting material.*

No.

This pass covers packages containing * of †, being the property of , while in transport from to .

Signature of holder of general license no.

[*Endorsement on Form of Pass.*]

8. The person in charge of any cart containing explosive material transported under a license shall not smoke or permit smoking on or dangerously near such cart.

* Here enter quantity of material. † Here enter nature of material.

SCHEDULE VII—*contd.*

FORM No. XI.

[RULE 24 (1) (*a*).]

FEE—TWENTY RUPEES IN STAMPS.

License to manufacture, convert, sell or keep and sell, arms, ammunition or military stores (other than breach-loading rifles, rifle ammunition or military stores for rifles.)

Serial number of license.	Name, description and residence of licensee.	Place of business, factory or shop.	DESCRIPTION OF ARMS.		DESCRIPTION OF AMMUNITION OR MILITARY STORES.		Date on which the license expires.
			to be manufactured or converted.	to be sold or kept for sale.	to be manufactured.	to be sold or kept for sale.	
							In Burma— The 31st March, 19 . *Elsewhere*— The 31st December, 19 .

(Signature.)

The _____ 19 .

Seal

Commissioner of Police, _____
Magistrate of the _____ *district.*

Form for renewal of the License.

Date and year of renewal.	Date on which the renewed license expires.	Signature of Commissioner of Police, ——— Magistrate of the ——— district.

SCHEDULE VII—*contd.*

FORM NO. XI—contd.

Conditions.

1. This license is granted subject to all the provisions of the Indian Arms Act, 1878 (XI of 1878), and the Indian Arms Rules, 1909.

2. He shall maintain registers of all arms manufactured or converted, of all ammunition and military stores manufactured, of all stock in hand, and of all sales, in such form as the local Government may direct.

3. He shall exhibit his stock and his registers on the demand of any Magistrate or any Police officer of a rank not below that of Inspector, or, if the local Government so directs, of Sub-Inspector.

4. (1) He shall affix on a conspicuous part of his place of business, factory or shop a signboard, on which shall be painted in large letters in English and in the vernacular of the district his name and the words "License to manufacture (or "License to deal in) arms, ammunition and military stores," as the case may be.

(2) He shall also affix in his place of business, factory or shop a copy of section 28 either in English or in the Vernacular of the district.

5. He shall at the time of purchase endorse upon the license of every purchaser holding a license in Form Nos. XVI, XVII, XVIII or XIX—

(*a*) the name, description and residence of the person who takes delivery of the articles sold,

(*b*) the nature and quantity of the articles sold, and

(*c*) the date of sale,

and shall sign the endorsement.

6. He shall not sell ammunition to any person licensed to possess or carry arms, in excess of the maximum which may be fixed by the local Government for such person and which is endorsed on his license.

7. He shall not sell arms, ammunition or military stores elsewhere than at the place of business, factory or shop specified in column 3.

8. He shall not sell arms, ammunition or military stores to a native officer, non-commissioned officer and soldier of the Indian Army unless he produces a written pass or permit signed by his Commanding Officer, and then only to the extent and on the conditions specified in such pass or permit.

9. He shall not keep Government arms, ammunition or military stores or, unless he is specially authorized in this behalf by the local Government, keep or sell revolvers manufactured out of India or magazine pistols.

Explanation.—For the purposes of this condition,—

(*a*) "Government arm" means a fire arm or other weapon which is the property of the Government; and

(*b*) "Government ammunition" and "Government military stores," mean ammunition and military stores manufactured in any Government factory, or prepared for and supplied to the Government.

10. Where the license is granted in and for any local area in Eastern Bengal and Assam the licensee shall not sell arms or ammunition, without a special permit from a Magistrate, to any member of a hill-tribe to which the local Government may from time to time by notification apply this condition.

11. (1) Where the license is granted in and for any local area in Burma, the licensee shall not, save as herein otherwise provided, sell arms, ammunition or military stores to or to the use of any person without the sanction in writing of the Magistrate of the district in which such person resides

SCHEDULE VII—*contd.*

FORM NO. XI—*concluded.*

(2) Nothing in this condition shall be deemed to apply to sales to or to the use of—

(*a*) Any Government official exempted under section 27 from certain prohibitions and directions contained in sections 13 to 16, or

(*b*) any person whose name is included in a list compiled by the Magistrate of the district for this purpose and who declares that he purchases for his own use.

12. (1) Where the license is granted in and for any local area in the North-West Frontier Province or the Dera Ghazi Khan district or the Isa Khel tahsil of the Mianwali district of the Punjab the licensee shall not, save as herein otherwise provided, sell arms, ammunition or military stores to or for the use of any person without the sanction in writing of the Magistrate of the district in which such person resides.

(2) Nothing in this condition shall be deemed to apply to sales to or to the use of—

(*a*) any person who is exempted under any of the articles (*1*) to (*5*), (*9*), (*13*), (*14*), or article (*18*), sub-head (*d*), of the table appended to schedule I, from certain prohibitions and directions contained in sections 13 to 16, or

(*b*) any villagers residing in the North-West Frontier Province and exempted under articles (22) and (23) of the table appended to schedule I from certain prohibitions and directions contained in sections, 13, 14, and 15 of the Act.

(*c*) any person whose name is included in any list compiled by the Magistrate of the district for this purpose and who declares that he purchases for his own use.

13. Save where the local Government directs the omission of this condition, the licensee shall forthwith give information at the nearest police station of the loss or theft of any arms, ammunition or military stores covered by the license.

FORM NO. XII.

[RULE 24 (1)(*b*).]

FEE—TEN RUPEES IN STAMPS.

License to keep and sell arms, ammunition or military stores (other than breech-loading rifles, rifle ammunition or military stores for rifles).

Serial number of license.	Name, description and residence of licensee.	Place of business or shop.	DESCRIPTION OF		Date on which the license expires.
			Arms.	Ammunition or military stores.	
					In Burma— The 31st March, 19 . *Elsewhere*— The 31st December 19 .

(Signature.)

Commissioner of Police, — — — — — —
Magistrate of the — — — — — — *district.*

Seal.

The — — — — — — — — *19* .

SCHEDULE VII—*contd.*

FORM No. XII—*contd.*

Form for renewal of the License.

Date and year of renewal.	Date on which the renewed license expires.	Signature of Commissioner of Police or Magistrate.

Conditions.

1. This license is granted subject to the provisions of the Indian Arms Act, 1878 (XI of 1878) and the Indian Arms Rules, 1909.

2. He shall maintain registers of all arms, ammunition and military stores in stock and of all sales, in such form as the local Government may direct.

3. He shall exhibit his stock and his register on the demand of any Magistrate or any Police officer of a rank not below that of Inspector or, if the local Government so directs, of Sub-Inspector.

4. (1) He shall affix on a conspicuous part of his place of business or shop a signboard, on which shall be painted in large letters in English or in the Vernacular of the district his name and the words "Licensed to deal in arms, ammunition and military stores."

(2) He shall also affix in his place of business or shop a copy of section 28 in English or in the Vernacular of the district.

5. He shall at the time of purchase endorse upon the license of every purchaser holding a license in form no XVI, XVII, XVIII or XIX—

(*a*) the name, description and residence of the person who takes delivery of the articles sold,
(*b*) the nature and quantity of the articles sold, and
(*c*) the date of sale,

and shall sign the endorsement.

6. He shall not sell ammunition to any person licensed to possess or carry arms in excess of the maximum which may be fixed by the local Government for such person and which is endorsed on his license.

7. He shall not sell arms, ammunition or military stores elsewhere than at the place of business or shop specified in column 3.

8. He shall not sell arms, ammunition or military stores to a native officer, non-commissioned officer and soldier of the Indian army, unless he produces a written pass or permit signed by his Commanding Officer, and then only to the extent and on the conditions specified in such pass or permit.

SCHEDULE VII—*contd.*

FORM NO. XII—*concluded.*

9. He shall not keep Government arms, ammunition or military stores or, unless he is specially authorized in this behalf by the local Government, keep or sell revolvers manufactured out of India or magazine pistols.

Explanation—For the purposes of this condition—

(*a*) "Government arm" means a fire-arm or other weapon which is the property of the Government; and

(*b*) "Government ammunition" and "Government military stores" mean ammunition and military stores manufactured in any Government factory, or prepared for and supplied to Government.

10. Where the license is granted in and for any local area in Eastern Bengal and Assam, the licensee shall not sell arms or ammunition, without a special permit from a Magistrate, to any member of a hill-tribe to which the Lieutenant-Governor may, from time to time by notification, apply this condition.

11. (1) Where the license is granted in and for any local area in Burma, the licensee shall not, save as herein otherwise provided, sell any arms, ammunition or military stores to or to the use of any person without the sanction in writing of the Magistrate of the district in which such person resides.

(2) Nothing in this condition shall be deemed to apply to sales to or to the use of—

(*a*) any Government official exempted under section 27 from certain prohibitions and directions contained in sections 13 to 16, or

(*b*) any person whose name is included in any list compiled by the Magistrate of the district for this purpose and who declares that he purchases for his own use.

12. (1) Where the license is granted in and for any local area in the North-West Frontier Province, or the Dera Ghazi Khan district or the Isa Khel tahsil of the Mianwali district of the Punjab, the licensee shall not, save as herein otherwise provided, sell arms, ammunition or military stores to or to the use of any person without the sanction in writing of the Magistrate of the district in which such person resides.

(2) Nothing in this condition shall be deemed to apply to sales to or to the use of—

(*a*) any person who is exempted under any of the articles (*1*) to (*5*), (*9*), (*13*), (*14*), or article (*18*) sub-head (*d*), of the table appended to schedule I from certain prohibitions and directions contained in sections 13 to 16, or

(*b*) any villagers residing in the North-West Frontier Province and exempted under articles (22) and (23) of the table attached to schedule I from certain prohibitions and directions contained in sections 13, 14 and 15 of the Act,

(*c*) any person whose name is included in any list compiled by the Magistrate of the district for this purpose and who declares that he purchases for his own use.

13. Save where the local Government directs the omission of this condition, the licensee shall forthwith give information at the nearest police station of the loss or theft of any arms, ammunition or military stores covered by the license.

SCHEDULE VII—*contd.*

FORM No. XIII.

[RULE 24 (2) (*a*).]

FEE—*Where the licensee holds a license in Form No. XI*, FREE OF ALL CHARGE.

In all other cases, TWENTY RUPEES IN STAMPS.

License to manufacture, convert, sell, or keep and sell breech-loading rifles, rifle ammunition or military stores for rifles.

Serial number of license.	Name, description and residence of licensee.	Place of business, factory or shop.	DESCRIPTION OF ARMS.		DESCRIPTION OF AMMUNITION OR MILITARY STORES.		Date on which the license expires.
			to be manufactured or converted.	to be sold or kept for sale.	to be manufactured.	to be sold or kept for sale.	
							In Burma— The 31st March 19 . *Elsewhere*— The 31st December 19 .

(Signature.)

Seal.

Secretary to the _____ *Commissioner in Sind.*

The _____ 19 .

Form for renewal of the License.

Date and year of renewal.	Date on which the renewed license expires.	Secretary to the local Government, Commissioner in Sind.

SCHEDULE VII—*contd.*

FORM NO. XIII—*concluded.*

Conditions.

1. This license is granted subject to all the provisions of the Indian Arms Act, 1878 (XI of 1878) and the Indian Arms Rules, 1909.

2. He shall maintain registers of all arms, ammunition and military stores in stock, and of all sales, in such form as the local Government may direct.

3. He shall exhibit his stock and his registers on the demand of any Magistrate or any Police officer of a rank not below that of Inspector, or, if the local Government so directs, of Sub-Inspector.

4. (1) He shall affix on a conspicuous part of his place of business, factory or shop a signboard, on which shall be painted in large letters in English or in the Vernacular of the district his name and the words "Licensed to deal in breech-loading rifles, rifle ammunition and military stores for rifles."

(2) He shall also affix in his place of business. factory or shop a copy of section 28 either in English or in the Vernacular of the district.

5. He shall at the time of purchase endorse upon the license of every purchaser holding a license in Form XVI, XVII, XVIII or XIX—

(*a*) the name, description and residence of the person who takes delivery of the article sold,

(*b*) the nature and quantity of the articles sold, and

(*c*) the date of sale,

and shall sign the endorsement.

6. He shall not sell breech-loading rifles, rifle ammunition or military stores for rifles, elsewhere than at the place of business, factory or shop specified in column 3.

7. He shall not keep Government arms, ammunition or military stores.

Explanation.—For the purposes of this condition,—

(*a*) "Government arm" means a firearm or other weapon which is the property of the Government; and

(*b*) "Government ammunition" and "Government military stores" mean ammunition and military stores manufactured in any Government factory or prepared for and supplied to Government.

8. He shall not sell arms, ammunition or military stores to a native officer, non-commissioned officer and soldier of the Indian army, unless he produces a written pass or permit signed by his Commanding Officer, and then only to the extent and on the conditions specified in such pass or permit.

9. (1) Where the license is granted in and for any local area in Burma or in the North-West Frontier Province, or the Dera Ghazi Khan district or the Isa Khel Tahsil of the Mianwali district of the Punjab, the licensee shall not, save as herein otherwise provided sell breech-loading rifles, rifle ammunition or military stores for rifles without the sanction in writing of the Magistrate of district in which such person resides.

(2) Nothing in this condition shall be deemed to apply to sales to or to the use of—

(*a*) any person who is exempted under section 27 of the Act from certain prohibitions and directions contained in sections 13 to 16, or

(*b*) any person whose name is included in any list compiled by the Magistrate of the district for this purpose and who declares that he purchases for his own use.

10. Save where the local Government directs the omission of this condition, the licensee shall forthwith give information at the nearest police station of the loss or theft of any arms, ammunition or military stores covered by the license.

SCHEDULE VII—*contd.*

FORM NO. XIV.

[RULE 24 (2) (*b*).]

FEE—*Where the licensee already holds a license in Form No. XIII*, FREE OF ALL CHARGE.
In all other cases, TEN RUPEES IN STAMPS.

License to keep and sell breech-loading rifles, rifle ammunition or Military stores for rifles.

Serial number of license.	Name, description and residence of licensee.	Place of business or shop.	DESCRIPTION OF		Date on which the license expires.
			Arms.	Ammunition or military stores.	
					In Burma— The 31st March, 19 . *Elsewhere*— The 31st December, 19 .

(Signature.)

Secretary to the——————
Commissioner in Sind.

The——————19 .

Form for renewal of the License.

Date and year of renewal.	Date on which the renewed license expires.	Secretary to the local Government. Commissioner in Sind.

SCHEDULE VII—*contd.*

FORM NO. XIV—*concluded.*

Conditions.

1. This license is granted subject to all the provisions of the Indian Arms Act, 1878 (XI of 1878) and the Indian Arms Rules, 1909.

2. He shall maintain registers of all arms, ammunition and military stores in stock and of all sales, in such form as the local Government may direct.

3. He shall exhib his stock and his register on the demand of any Magistrate or any Police officer of a rank not below that of Inspector or, if the local Government so directs, of Sub-Inspector.

4. (1) He shall affix on a conspicuous part of his place of business or shop a signboard on which shall be painted in large letters in English and in the Vernacular of the district his name and the words "Licensed to deal in breech-loading rifles, rifle ammunition and military stores for rifles."

(2) He shall also affix in his place of business or shop a copy of section 28 in English or in the Vernacular of the district.

5. He shall at the time of purchase endorse upon the license of every purchaser holding a license in any of the Form Nos. XVI, XVII, XVIII or XIX—

(*a*) the name, description and residence of the person who takes delivery of the articles sold,

(*b*) the nature and amount of the article sold, and

(*c*) the date of sale,

and shall sign the endorsement.

6. He shall not sell arms, ammunition or military stores elsewhere than at the place of business or shop specified in column 3.

7. He shall not keep Government arms, ammunition or military stores.

Explanation.—For the purposes of this condition,—

(*a*) "Government arm" means a firearm or other weapon which is the property of the Government ; and

(*b*) "Government ammunition" and "Government military stores" mean ammunition and military stores manufactured in any Government factory, or prepared for and supplied to Government.

8. He shall not sell arms, ammunition or military stores to a native officer, non commissioned officer and soldier of the Indian army, unless he produces a written pass or permit signed by his Commanding Officer, and then only to the extent and on the conditions specified in such pass or permit.

9. (1) When the license is granted in and for any local area in Burma or in the North-West Frontier Province, or the Dera Ghazi Khan district or the Isa Khel tahsil of the Mianwali district of the Punjab, the licensee shall not, save as herein otherwise provided, sell breech-loading rifles, rifle ammunition or military stores for rifles without the sanction in writing of the Magistrate of the district in which such person resides.

(2) Nothing in this condition shall be deemed to apply to sales to or to the use of—

(*a*) any person who is exempted under section 27 of the Act, from certain prohibitions and directions contained in sections 13 to 16, or

(*b*) any person whose name is included in any list compiled by the Magistrate of the district for this purpose and who declares that he purchases for his own use.

10. Save where the local Government directs the omission of this condition, the licensee shall forthwith give information at the nearest police station of the loss or theft of any arms, ammunition or military stores covered by the license.

SCHEDULE VII—*Contd.*

FORM No. XV.

[RULE 26.]

FREE OF ALL FEE.

License for the possession of firearms, ammunition or military stores.

Name, description and residence of licensee and agents, if any.	Number and description of firearms.	AMMUNITION OR MILITARY STORES.		Place (with description where articles are to be kept).	Period for which the license is valid.
		Description.	Quantity.		

(Signature.)

Commissioner of Police .

Magistrate of the ——— *district.*

Seal.

The ——— *of* ——— *19* .

Conditions.

1. This license is granted subject to all the provisions of the Indian Arms Act, 1878 (XI of 1878) and the Indian Arms Rules, 1909.

2. It covers only the fire-arms, ammunition and stores specified in columns 3 and 4, so long a they are kept in the place described in column 5, but does not authorize him—

(*a*) to go armed, or

(*b*) to keep Government arms or ammunition.

In Burma, condition 2 (*b*) may be cancelled by the authority granting the license, if empowered to do so by the local Government and an endorsement added showing the Government arms and ammunition which the licensee is authorised to possess.

Explanation.—For the purposes of this condition—

(*a*) " Government arm " means a fire-arm or other weapon which is the property of the Government ; and

(*b*) " Government ammunition " means ammunition manufactured in any Government factory, or prepared for and supplied to Government.

SCHEDULE VII—*contd.*

FORM No. XVI.

[RULE 27.]

FEE—when granted under sub-rule (4) FREE OF ALL FEE.

In any other case,—

(i) in disarmed districts, EIGHT ANNAS, and

(ii) elsewhere, FOUR ANNAS,

in stamps for each weapon.

License for the possession of arms and ammunition and for going armed for the sport / *purpose of* protection / display.

1	2	3		4					5	
Serial number of license.	Name, description and residence of licensee and agent (if any).	ARMS OR AMMUNITION THAT LICENSEE IS ENTITLED TO POSSESS.		Retainers (if any) covered by the license.					District or place within which the license is valid.	Date on which the license expires.
		Description.	Quantity.	Name of retainer.	Name of retainer's father.	Address of retainer.	ARMS OR AMMUNITION THAT RETAINER IS ENTITLED TO POSSESS.			
							Description.	Quantity.		

(Signature),

Seal

Commissioner of Police. _____

Magistrate of the _____ *District.*

The _____ *19* .

Form for renewal of the license.

Date and year of renewal.	Date on which the renewed license expires.	Signature of Commissioner of Police, _____ / Magistrate of the _____ district.

SCHEDULE VII—*continued.*

FORM No. XVI—*concluded.*

Conditions.

1. This license is granted subject to all the provisions of the Indian Arms Act, 1878 (XI of 1878), and the Indian Arms Rules, 1909.

2. It covers only the persons named, and the arms and ammunition described, therein and such retainers (if any) as may be entered in column 4.

3. Save where it is countersigned in the manner provided by rule 27, sub-rule (2) or sub-rule (3), it extends only to the district or place specified therein.

4. The licensee or any ratainer acting under this license shall not go armed with any arms covered thereby otherwise than in good faith for the purpose of sport / protection / display; and, save where he is specially authorized in this behalf—

(*in any Presidency Town or Rangoon*) by the Commissioner of police,
(*in any other place*) by the Magistrate of the District,

he shall not take any such arms into a railway carriage or to a fair, religious procession or other public assemblage.

5. The licensee, at the time of purchasing any new arms or ammunition, shall cause the following particulars to be endorsed upon his license under the vendor's signature, namely :—

(*a*) the name, description and residence of the person who takes delivery of the articles purchased ;

(*b*) the nature and quantity of the articles purchased ; and

(*c*) the date of purchase.

6. He shall not purchase ammunition in excess of the maximum which may from time to time be fixed by the local Government.

7. Save where the local Government directs the omission of this condition, he shall forthwith give information at the nearest police station of the loss or theft of any arms covered by the license.

8. He shall not possess Government arms and ammunition.

Explanation.—For the purposes of this condition ,—

(*a*) " Government arm " means a firearm or other weapon which is the property of the Government ; and

(*b*) " Government ammunition " means ammunition manufactured in any Government factory, or prepared for and supplied to Government.

NOTE.—In Burma, condition 8 may be cancelled by the authority granting the license if empowered to do so by the local Government, and an endorsement added showing the Government arms and ammunition which the licensee is authorised to possess.

9. Where the license is granted for the purpose of sport, the licensee or any retainer acting under the license shall observe such close season as may be prescribed by the local Government in respect of the game-birds and animals hereinafter set forth below.

SCHEDULE VII—*contd.*

FORM NO. XVII.

[RULE 28.]

FREE OF ALL FEE

License for the possession of arms and ammunition and for going armed, for the destruction of wild animals which do injury to human beings or cattle.

Name, description and residence of licensee.	ARMS AND AMMUNITION.		Place or tract within which the license is valid.	Specification of the wild beasts which may be destroyed under this license.	Period for which the license is valid.	Title and residence of Magistrate to whom the license and weapon must be shown between the 15th November and the 31st December.
	Description.	Quantity.				

(Signature.)

Seal *Magistrate of the*——————*District.*

The——————*of*——————*19* .

Conditions.

1. This license is granted subject to all the provisions of the Indian Arms Act, 1878 (XI of 1878). and the Indian Arms Rules, 1909.

2. Once every year, between the 15th November and the 31st December, the licensee shall produce this license and every weapon covered thereby before the Magistrate referred to in column 6.

3. He shall not go armed with any arms covered by this license otherwise than in good faith for the destruction of wild animals which do injury to human beings or cattle; nor shall he take any such arms into a railway carriage, or to a fair, religious procession or other public assemblage or to any considerable distance beyond the place or tract entered in column 4.

4. He shall forthwith give information at the nearest police station of the loss or theft of any gun covered by this license.

5. He shall not keep Government arms or ammunition.

Explanation.—For the purposes of this condition—

(*a*) "Government arm" means a firearm or other weapon which is the property of the Government; and

(*b*) "Government ammunition" means ammunition manufactured in any Government factory, or prepared for and supplied to Government.

NOTE.—In Burma, condition 5 may be cancelled by the authority granting the license, if empowered to do so by the local Government and an endorsement added showing the Government arms and ammunition which the licensee is entitled to possess.

6. He shall not purchase ammunition in excess of the maximum which may from time to time be fixed by the local Government.

7. Without prejudice to the voidance of this license for breach of any of the foregoing conditions, it shall be void if—

(*a*) the licensee dies, or

(*b*) any weapon covered thereby—

(i) is sold, or

(ii) is attached in execution of a decree.

FORM No. XVIII.

[RULE 29.]

FREE OF ALL FEE.

License for the possession of arms and ammunition and for going armed, for the destruction of wild animals doing injury to crops or cattle.

Name, description and residence of licensee.	Name and description of any member of the licensee's family, or servant employed to watch crops or cattle, residing with him, by whom the arms covered by this license may be also used.	ARMS AND AMMUNITION.		Place or tract within which the license is valid.	Period for which the license is valid.
		Description.	Quantity.		
					From——— To————

The ———— *Magistrate of the* ————

Conditions.

1. This license is granted subject to all the provisions of the Indian Arms Act, 1878 (XI of 1878), and the Indian Arms Rules.

2. The licensee shall not go armed with any arms covered by this license otherwise than in good faith for the destruction or driving away of wild animals which do injury to the crops or cattle situated in the area specified in the license.

3. The licensee shall not use any arms covered by this license otherwise than in the place or tract in which the license is valid.

4. He shall not lend any arms or ammunition covered by this licence to any person, other than a *bona fide* member of his family, or servant who may be employed by him to protect the crops or cattle situated in the area specified in the license and who is mentioned in column 2 of the license.

5. He shall forthwith give information at the nearest police station of the loss or theft of any gun or ammunition covered by this license.

6. The licensee shall not keep Government arms or ammunition.

Explanation.—For the purpose of this condition—

(*a*) "Government arm" means a firearm or other weapon which is the property of Government; and

SCHEDULE VII—*contd.*

FORM No. XVIII—*concluded.*

Conditions—(concluded).

(*b*) "Government ammunition" means ammunition manufactured in any Government factory or prepared for and supplied to Government.

NOTE.—In Burma, condition 6 may be cancelled by the authority granting the license if empowered to do so by the local Government and an endorsement added showing the Government arms and ammunition which the licensee is entitled to possess.

7. This license shall be void if the licensee commits a breach of any of the above conditions or if the licensee dies, or if any weapon covered thereby—

(i) is sold,

(ii) is attached in execution of a decree.

FORM No. XIX.

[Rule 30.]

FEES—

(*a*) when granted under rule 30 (1) (*a*) (*b*), FOUR ANNAS IN STAMP FOR EACH WEAPON,

(*b*) when granted under rule 30 (1) (*c*) FREE OF ALL FEE.

License for going armed on a journey in or through any province.

1	2		3					4	5	6
Name, description and residence of licensee and Agent (if any).	ARMS OR AMMUNITION THAT LICENSEE IS ENTITLED TO CARRY.		RETAINERS (IF ANY) COVERED BY THE LICENSE.					Place of departure, route, and place of destination.	Period which the journey is likely to occupy.	Period for which the license is valid.
	Description.	Quantity.	Name of retainer.	Name of retainer's father.	Address of retainer.	Arms or ammunition that retainer is entitled to carry.				
						Description.	Quantity.			
										From the——— to the——— 19 .

(Signature.)

The——— 19 .

Seal

Commissioner of police,———
Magistrate of the———*district*
Political Agent for the———*State.*

SCHEDULE VII—*concluded.*

FORM NO. XIX—*concluded.*

Conditions.

1. This license is granted subject to all the provisions of the Indian Arms Act, 1878 (XI of 1878), and the Indian Arms Rules, 1909.

2. It covers only the persons named, and the arms and ammunition described therein, and such retainers (if any) as may be entered in column 3.

3. The licensee or any retainer acting under this license shall not, unless specially empowered in this behalf by the authority granting the license, go armed in a railway carriage or to a fair, religious procession or other public assemblage.

4. The licensee shall, at the time of purchasing any new arms or ammunition, cause the following particulars to be endorsed upon his license under the vendor's signature, namely :—

(*a*) the name, description and residence of the person who takes delivery of the articles purchased ;

(*b*) the nature and quantity of the articles purchased ; and

(*c*) the date of purchase.

5. He shall not go armed with Government arms or ammunition.

Explanation.—For the purposes of this condition,—

(*a*) "Government arm" means a firearm or other weapon which is the property of the Government ; and

(*b*) "Government ammunition" means ammunition manufactured in any Government factory or prepared for and supplied to the Government.

GOVERNMENT OF INDIA.

HOME DEPARTMENT.

Notification, Dated the 16th August 1909.

No. 3103.—In exercise of the powers conferred by section 35 of the Court-fees Act, 1870 (VII of 1870), and in supersession of all previous Notifications on the same subject, the Governor-General in Council is pleased—

(*a*) to remit all fees payable under schedule VII upon applications relating to licenses or duplicates granted or renewed under the Indian Arms Rules, 1909, other than licenses or duplicates of the nature hereinafter referred to in sub-head (*b*) ; and

(*b*) to reduce to one anna all fees, exceeding one anna, payable under the said schedule upon application relating to licenses or duplicates granted or renewed under the said Rules in respect of which—

(*i*) no fee is payable under the said Rules, or

(*ii*) the fee payable under the said Rules has been collected in full.

APPENDIX B.

RULES AND ORDERS REGARDING THE GRANT OF SHOOTING PASSES.

No. 1458—83.

Extract from the proceedings of the Government of India, Home Department (Public) under date, Simla the 27th September 1895.

Read—

Home Department Resolution Nos. 45 – 1755-70, dated the 24th September 1879.

Read also—

Home Department Endorsement Nos. 26—1069-77, dated the 4th August 1893, forwarding to Local Governments and Administrations a draft General Order making certain additions to the rules relating to the grant of shooting passes to British soldiers which were circulated with Home Department letter Nos. 1462-78, dated the 16th May 1892.

RESOLUTION.

In the Resolution, read in the preamble, the Local Governments and Administrations were requested to instruct district officers to take every opportunity of warning Englishmen and others against entering on standing crops for sporting purposes unless they first obtained the permission of the owners to do so. The Government of India have recently had brought to their notice a case in which a European, while out shooting, caused the death of two natives—in an affray arising out of the fact that he shot peafowl in the vicinity of a village. The rules issued by the Military authorities for regulating the grant of shooting passes to British soldiers provide all the safeguards that are practicable to prevent affrays between soldiers and villagers ; but they are at present no orders ensuring that such warnings shall be given as may, so far as is possible, duly direct and regulate the conduct of sportsmen other than soldiers. The Governor-General-in-Council accordingly desires that instructions should be issued by Local Governments and Administrations to district officers to warn sportsmen, whether Europeans or others (1) against trespassing on standing crops without the consent of the owners (2) against shooting peafowl, or other birds or animals which are looked upon as sacred, in the vicinity of villages or habitations (3) against shooting domestic animals, such as dogs or pigs and (4) generally against shooting in the immediate vicinity of villages, temples and mosques.

1. I am directed to forward a copy of the revised rules for the grant of shooting passes to British soldiers in India which have been approved by the Governor-General-in-Council and published in the Gazette of India of the 27th October last, and to request that the special attention of the local civil officers concerned in the administration of the rules may be drawn to them.

2. These rules are drawn up chiefly for the guidance of the Military authorities, but their successful working cannot be insured without the co-operation of the civil officers. The Governor-General-in-Council therefore considers it necessary that the duties of the latter class of officers respecting this matter should be clearly laid down.

3. In rule 4 of the revised rules it has been provided that the Commanding Officer of a Regiment or Detachment is at once to send to the District Magistrate the substance of any report (together with a copy of the complaint, if any), that may be made by the member of a shooting party who is in charge of the party, on their return to quarters, respecting any breach of the rules, any affray with natives, or any mishap which may have occurred during the absence of the party. The Government of India

consider it necessary that the District Officer also should communicate to the Commanding Officer immediate information of any breach of the rules by men under his command that may be reported to the Civil authorities. Cases have come to the notice of the Governor-General-in-Council in which the civil authorities have omitted to make a report upon such occurrences to the Officer Commanding the Regiment, who remained in ignorance of the affair until a report was called for from Army Head-Quarters, or by the Government of India, or until the police inquiry had been completed. I am to request that, to enable the Commanding Officer of a Regiment or Detachment to take suitable notice of any infringement of the shooting pass rules, orders may be issued which will insure due information being communicated by the District Officer to the local Military authorities in cases which may come to his notice.

4. Rule 25 of the revised rules lays down that Officers Commanding Stations and Officers Commanding Troops about to march will communicate with the Civil District Officer in order to ascertain (*a*) in what localities shooting ought to be forbidden, and (*b*) what animals or birds are regarded by the inhabitants as sacred or are protected by rules relating to the establishment of a close season. There is, however, more continuity in the Civil District Offices, where the establishments, if not the officers, are to a great extent permanent, than in Military Cantonments. With a view, therefore, to guarding against the provisions of the rule being overlooked, I am to request that instructions may be issued to Commissioners and District Officers to the effect that, on the arrival of a corps or detachment in a civil district, the District Officer shall at once certify to the Officer Commanding the corps or detachment what localities, animals and birds are forbidden for shooting purposes, either absolutely on account of the prejudice of the inhabitants, or for parts of the year in accordance with rules for close seasons. In defining tracts of country where shooting is to be allowed, the local officers should be directed to bear in mind the orders contained in Home Department Circular Letter No. 30/1012, 1028, dated the 31st July 1883, and to take care that no tracts are included where owing to the religious prejudices of the people, the agricultural circumstances of the district, or other sufficient causes, there would be risk of danger if free permission to shoot were accorded.

No. $\frac{18}{1230 \quad 1239}$ dated the 31st July 1891.

5. In the circular of the 31st July 1883 referred to above, and in that of 1891 marginally noted, Local Governments and Administrations were requested to instruct the District authorities to cause the shooting pass rules to be explained to villagers in the neighbourhood of cantonments, and to warn such villagers against interfering with soldiers out shooting and using violence to them, and also against taking the law into their own hands in cases in which soldiers infringe the rules. The Governor-General in-Council now directs that the substance of the revised rules, so far as they affect the villagers should be periodically notified in simple language in the villages and tracts where soldiers are in the habit of shooting and that District Officers should impress upon landlords, headmen and village police that they are expected to give their assistance in avoiding disputes with soldiers out shooting. The headmen and village police must see that soldiers conducting themselves properly are not molested, and that complaints of misconduct are reported to the proper authorities. In cases in which notice of the probable advent of a shooting party had been sent to the District Officer under rule 26 of the revised rules, he should with as little delay as possible, sent intimation to the headmen and village police (so far as this can be done) stating that a shooting pass has been issued and that they are to see that quarrels are avoided. Villagers should on no account take the law into their own hands, but should lodge any complaint they have to make in a legal manner.

6. In the circular from this Department, No. $\frac{50}{2349 \quad 2358}$, dated the 14th October 1887, the importance of conducting prompt investigation into cases of affrays between European soldiers and native villagers was inculcated ; and it was desired that, on the occurrence of a serious affray, the District Magistrate should invariably either himself proceed to the place or at once depute an European Magistrate or the District Superintendent of Police in order to investigate the matter on the spot at the earliest possible time after the occurrence. I am now to request that instructions may be issued that the investigation of a case between natives and soldiers arising out of a shooting dispute should, whenever possible, be entrusted to an English Magistrate or Police Officer not lower in rank than Assistant Superintendent, and that when such cases come into Court they should be tried by the District or Joint Magistrate. In cases which are not cognisable by the police, or where the prosecution is not undertaken by the Civil authorities, the Civil District Officer shall inform the Commanding Officer of the Corps or Detachment concerned to that effect for such action as the latter may consider fit to take.

7. In conclusion, I am to say that the Government of India think fit desirable that each Commissioner, District and Sub-Divisional Magistrate should be furnished with a copy of the revised rules as a separate publication.

Home Dept. Cir. Letter No. 3477, dated the 31st October, 1900.

ARMY REGULATION, EXTRACTS FROM THE (90—119).

90. The following rules will be observed, and apply to troops under all circumstances.

91. No soldiers shall carry firearms for sporting purposes without a pass. Only warrant officers with at least one good conduct badge are eligible for passes.

92. Each pass will be granted to a party of three, of whom one will be in charge. They must be accompanied by a native qualified to act an interpreter whose name will be entered on the pass. The party shall not separate while shooting. Soldiers not below the rank of sergeant belonging to sapper and miner corps, the sub-marine mining corps, the permanent staff of mounted infantry schools and during the winter months only, the permanent staff of sanitaria, may be granted passes to shoot alone, provided the officer issuing the pass is satisfied that their knowledge of the language is sufficient to enable them to make themselves understood by the natives.

93. The member in charge of the party shall carry the pass, and produce it when reasonably required to do so. Immediately on return he shall give it to his orderly sergeant reporting any breach of these rules, affray with natives, or mishap. The orderly sergeant shall at once report any occurrence to the O.C. the corps who will forth-with inform the O.C. the station and District Magistrate.

94. If a member of a party commits an act resulting in an injury to person or property, or is involved in an affray with natives, the party shall return to their quarters without delay, reporting when practicable to the nearest civil authority.

95. With the exception of game coolies, only those named in the pass shall accompany the party.

96. Arms shall not be loaded in the vicinity of quarters, and shall be unloaded as soon as the party leaves off shooting.

97. Shooting with bullets is forbidden except where unattended with danger. Shooting at night is forbidden except in forests.

98. No member of a shooting party shall address a native woman.

99. No member of a shooting party shall shoot within 500 yards of or enter, any village, building, or enclosure. The interpreter will obtain supplies required from a village.

100. No shooting shall take place at any animal, or bird, or in any locality, included in the prohibited list on the pass.

101. Shooting at a peafowl, is prohibited unless by permission endorsed on the pass. No shooting at hinds, does, monkeys, or dogs is allowed.

102. Members of parties are forbidden to trespass on or to shoot over Corps.

103. No firearms shall be used to except those specified on the pass. No rifle or carbine shall be used which carries Government ammunition or is under 450 bore, or is sighted for over 150 yeards. All bullets shall be hollow.

104. A private who is ineligible, for a pass shall not possess a sporting firearm.

105. All fire-arms and ammunition for sporting purposes shall be kept in the store-room under the care of the sergeant in charge who alone may issue arms on the production of a pass. On return of a party from shooting, their fire-arms and ammunition will be handed over to the sergeant, who will acknowledge their receipt on the pass.

106. All sporting fire-arms shall be shown on the daily state of the corps as "present", "on pass", or "absent."

107. Passes will be issued by the O.C. the corps, or detachment, to which the men belong. A pass must be on I.A.F.L. 1181 and be completely filled in. A record will be kept of all passes issued.

108. When an extended shooting pass (in the case of regimental warrant officers and soldiers with two or more good conduct badges, for not more than 14 days and in the case of others, 7 days) is granted to enable men to shoot at a distance from their own station, the following procedure will be observed :—

(i) A furlough pass to the military station nearest to the locality concerned will be issued, on which the O.C. the corps will state in red ink that the soldiers are eligible for a shooting pass.

(ii) A shooting pass will also be issued, the name of the interpreter, date of the pass, list of prohibited localities, animals and birds, and the countersignature of the O.C. being omitted. The production of the endorsed furlough pass and the shooting pass will be the authority to the sergeant in charge to issue arms and ammunition.

(iii) The party on arrival at the station concerned will report themselves to the staff officer.

(iv) The O.C. the corps to which they are then attached is responsible for the countersignature and completion of the shooting pass. He will also address the civil authorities as required by rule.

(v) The members of the party may keep their firearms in their own possession only for so long as the shooting pass is valid. When that period expires they must be at once lodged in the store-room.

109. The O.C. the station will ascertain the prohibited animals, birds, and localities, from the civil (in the case of a native state, the political) officer concerned. Shooting in a Government reserved forest is forbidden without a permit from the forest officer.

The O.C. a corps under orders to march will take similar steps with regard to the district to be passed through. When on the march through a native state, no shooting is allowed beyond ten miles from the camp.

110. The O.C will notify to the civil (or political) authority concerned, the grant of any pass extending over 3 days. This notice will be despatched usually more, but not less, than 3 days before the pass takeseff ect, and shall state the names and ranks of the party, the localities to be visited, and the dates for which the pass is valid.

111. When any serious breach of these rules takes place the O.C. the station will at once telegraph the occurrence (see para. 150). Detailed reports will follow by post.

112. Any soldier shooting without a pass shall be tried by court-martial, and on conviction be deprived of the privilege of shooting during the remainder of his Indian service. A member of a shooting party who commits any breach of these rules resulting in material damage to person or property, shall be tried by court-martial. Other breaches of these rules shall be reported to the Bde. Comdr.

113. The officer of J.A.G's department concerned shall, when necessity for a court-martial arises, frame the charge and prepare the brief for the prosecution: the proceedings shall be submitted through him to the confirming officer. The proceedings of any civil investigation should accompany the application for trial. The C-in-C and the G. of I will be informed of the result of all courts-martial.

114. If any act of a member of a shooting party results in an affray with natives or in material injury to person or property, and the offender cannot be identified, all passes may at the discretion of the L.G.C. be prohibited in the corps or district for a period not exceeding two years. Every prohibition shall be published in C.O. and reported to the C-in-C and the G of I.

115. Shooting passes will be granted to soldiers of departments by the O. C. the department in accordance with these rules, except that a soldier may be granted a pass to shoot alone if his O.C. is satisfied that his knowledge of the language is sufficient. A standing pass up to six months may be granted to a subordinate of the M. W. S. not employed in a cantonment.

116. A copy of these rules and of the list of prohibited localities, animals and birds, shall be hung conspicuously in every barrack room. A copy of paras 103 to 187 shall be hung in every squadron, battery and company store-room.

117. In April and October of each year paras 99 to 106, and 112 and 115, shall be read on parade to all British troops.

118. No shooting passes shall be given to troops disembarking in India until, after their arrival at their destination, the rules referred to in para 117 have been read to them on parade. An officer who has not passed the L.S. Urdu will not be permitted to go out shooting unless accompanied by an efficient interpreter. The O. C. any party of troops shall have his attention directed to this order before disembarking.

119. The following are the orders of the G. of I, to the civil and political authorities in connection with the above rules :—

(i) The rules will be periodically notified to the inhabitants of localities in which soldiers are in the habit of shooting.

(ii) When a complaint is made by a village against members of a shooting party, the district or political officer will at once report the matter to the O. C. the man concerned.

(iii) The district or political officer will, on arrival of troops in a civil district or native state at once inform the O. C. of the prohibited localities, animals, and birds.

(iv) The district or political officer will impress on zamindars, headmen, and police that they must use their endeavours to prevent disputes with, or the

molestation of, members of a shooting party, and that complaints are to be reported to the proper authorities by the villagers, who must not take the law into their own hands.

(v) When the district or political officer receives notice, under para 110, of the probable visit of a shooting party, he will at once inform the headmen and village police.

(vi) Disputes between members of a shooting party and villages will, if possible, be investigated by a European Magistrate or police officer not below the rank of Superintendent, and such cases will be tried by a District or Joint Magistrate. The O.C. concerned will be informed by the district officer of cases not cognisable by the police, or where prosecution is not undertaken by the civil authorties.

APPENDIX C.

RULES FOR THE ACQUISITION, POSSESSION AND SALE OF RIFLES.

India Army Order No. 12, dated the 3rd January, 1910.

Possession and sale of Arms.—The following rules for the acquisition, possession and sale of rifles, extracted from the Indian Arms Act, 1878 (Act XI of 1878) and the Indian Arms Rules, 1909, are published for the information and guidance of all concerned. Special attention is drawn to paragraphs 5 and 6 of this order which define the obligations of persons exempted from the provision of the Arms Act.

1. The following persons are exempted, in respect of the arms and ammunition described, when carried or possessed for their own personal use, from the prohibitions and directions contained in Ss. 13 to 16 of the Indian Arms Act, 1878, subject to the provisions stated below :—

(i) Persons exempted.

(*a*) Every Commissioned or Gazetted Officer of His Majesty's Military forces, every Commissioned Indian Officer of the Imperial Service Troops in active service, every member of the Imperial Cadet, Corps every warrant officer, non-commissioned officer and soldier in the service of His Majesty, and every enrolled Volunteer.

Provided that an Indian soldier while absent from his regiment on leave shall be exempted only in respect of such arms and ammunition as may be covered by a pass granted to him by his commanding officer (*vide* also Army Regulations India, Volume II).

(*Explanation*). The term "soldier" as used in this clause does not include a "reservist".

(ii) Every retired Commissioned or Gazetted Indian Officer or non-commissioned Officer of His Majesty's Indian Forces and every retired commissioned or gazetted officer of Imperial Service Troops who—

(*a*) is in receipt of a person as such, or

(*b*) not being in receipt of such a pension, has been recommended for exemption by his Commanding Officer by entry recorded on his discharge certificate.

2. (i) Description of arms and ammunition exempted.

All, except—

(*a*) Cannon,

(*b*) articles designed for torpedo service,

(*c*) war-rochets,

(*d*) rifles of ·303 inch. or ·450 inch. bore other than rifles of such bores lawfully imported into British India, and ammunition which can be fired from the same;

(*Explanation*). Lawfully imported refers to (*a*) rifles of ·303 inch. bore purchased or imported by officers as part of their equipment before 1st May 1903, (*b*) rifles of ·308 inch. bore or ·450 inch. bore of the M.H. pattern, imported before the 20th February 1901, (*c*) rifles of ·450 inch. bore not of the M.H. pattern, imported before the 27th October 1906, (*d*) rifles of ·303 inch. bore imported under paragraph 4 of this order, (*e*) rifles of ·303 inch. or ·450 inch. bore imported under special sanction of the Government of India.

(*e*) machinery for the manufacture of arms and ammunition.

3. Provisos and restrictions:—

The arms or ammunition carried or possessed by any person herein exempted shall not exceed such quantities (if any) as—

(*a*) the Government of India, or

(*b*) a local Government in respect of the territories administered by it or subject to its control,

may declare to be reasonable for him to carry or possess.

4. Special exemptions.

(*a*) (i) Every British Officer in staff, departmental and regimental employ, every enrolled member of a Volunteer Corps and every warrant officer or staff sergeant of a British unit of the Army (including a staff sergeant or warrant officer who is an instructor of a Volunteer Corps).

(ii) Description of arms exempted.

Single-barred rifles of ·303 inch. bore required for match shooting purposes.

(iii) Provisos and restrictions--

(*a*) Only one such rifle at a time shall be imported or used by any person hereby exempted.

(*b*) The rifle shall be sighted to a range of over 1,000 yards.

(*c*) The rifle shall in the case of regimental officers, warrant officers, non-commissioned officers and enrolled Volunteers become part of the equipment of the Corps to which the owner for the time being belongs.

(*d*) The owner shall, at the time of importation, produce a certificate from the Commanding Officer of the Corps, senior officer or Head of Department to which he belongs, to the effect that, in the case of regimental officers, warrant officers non-Commissioned officers and enrolled volunteers, the weapon will be brought on to the equipment ledger of the Corps, and in the case of staff and departmental officer's will be brought on to the equipment ledger of a Corps in the officers command or office inventory of stores, and will be accounted for in the same manner as other equipment.

(*e*) This exemption shall in the case of enrolled volunteers cease to have effect on the owner leaving the Volunteer Force.

Provided that, if he departs from India immediately after so leaving, he may take the weapon with him.

(*f*) Any person hereby exempted may dispose of his rifle to another person so exempted, provided that the rifle becomes part of the equipment of Corps to which the latter belongs, and is accounted for as such.

(*b*) (iv) Every pensioned Gurkha officer, non-Commissioned officer or soldier of His Majesty's Indian Forces residing in British India.

(v) Description of arms, etc.—Kukris.

5. Sale of Arms.—Nothing shall prevent any person from selling any arms or ammunition which he lawfully possesses for his own private use under paragraphs 1, 2, 3 and 4, above, to any person who is not by any enactment for the time being in force prohibited from possessing the same, but every person so selling arms or ammunition to any person other than a person entitled to possess the same by reason of an exemption by notification in the Gazette of India shall, without unnecessary delay, give to the Magistrate of the District, or to the officer in charge of the nearest police station, notice of the sale and of the purchaser's name and address.

6. Losses of arms—Losses or thefts of private arms must be forthwith reported to the nearest police station through the Commanding Officer or Head of the Department.

Note.—With regard to rule 5 above, instances have come to notice of carelessness in the disposal of firearms and ammunition, and of rifles and rifle ammunition having been sent for public auction, and so disposed of to persons not entitled to possess them. The Government of India have desired that severe notice be taken of any cases of negligence in these matters and that all concerned should be warned of the consequences of disposing of arms and ammunition to any person in this country, without making sure that such person is lawfully entitled to purchase or possess the same.

APPENDIX D.

THE INDIAN TARIFF ACT (ACT VIII OF 1894).

SCHEDULE II—(IMPORT TARIFF).

Arms, Ammunition and Military Stores.

Including also any articles, other than those included in Nos. 1 to 12 of this Schedule, which are "arms" within the meaning of the Indian Arms Act, and any articles which the Governor-General in Council may, by notification in Gazette of India, declare to be "ammunition," or "military stores" for the purposes of this Act.

XI of 1878.

	Name of Articles.	Duty.	
		RS.	A.
1.	Firearms other than pistols, including gas and air guns and rifles for each	50	0
2.	Barrels for the same, whether single or double, for each	30	0
3.	Pistols, for each	15	0
4.	Barrels for the same, whether single or double, for each	10	0
5.	Springs used for firearms, including gas and air guns and rifles, for each	8	0
6.	Gunstocks, sights, blocks, and rollers, for each	5	0
7.	Revolver breeches, for each cartridge they will carry	2	8
8.	Extractors, nippers, heel-plates, pins, screws, tangs, bolts, thumb-pieces, triggers, trigger-guards, hammers, pistons, plates and all other parts of a firearm (including a gas and air gun or rifle) not herein otherwise provided for and all tools used for cleaning or putting together or loading the same, for aceh	1	8

		Rs.	A.
9.	Machines for making, loading, or closing cartridges, for each ...	10	0
10.	Machines for capping cartridges, for each	2	8

Exception I.—Articles falling under the 5th, 6th, 8th, 9th, or 10th head of the foregoing list, when they appertain to a firearm falling under the 1st or third head, and are fitted into the same case with such firearm, are free ... ...

Exception II.—The following are also free, namely.—

(*a*) Arms forming part of the regular equipment of an officer entitled to wear diplomatic, military, naval, or police uniform ;

(*b*) a sword, a revolver, or a pair of pistols, when accompanying an officer of Her Majesty's Regular Forces, or a commissioned officer of a volunteer crops, or certified by the commandant of the corps to which such officer belongs, or, in the case of an officer not attached to any crops, by the officer commanding the station or district in which such officer is serving, to be imported by the officer for the purposes of his equipment ;

(*c*) swords and revolvers which are certified by an Inspector-General of Police to be part of the ordinary equipment of members of the Police-force under his charge ;

(*d*) swords forming part of the equipment of native commissioned officers of Her Majesty's Army ;

(*e*) swords for presentation as army or volunteer prizes ;

(*f*) arms, ammunition and military stores imported with the sanction of the Government of India for the use of any portion of the military forces of a Native State in India which may be maintained and organised for Imperial Service ;

(*g*) Morris tubes and patent ammunition when imported by officers commanding British and Native regiments or volunteer corps, for the instruction of their men.

Proviso 1.—No duty in excess of 10 per cent. *ad valorem* shall be levied upon any of the articles numbered 1 to 10 in the foregoing list when they are imported in reasonable quantity, for his own private use, by any person lawfully entitled to possess the same.

Proviso 2.—When any articles which have been otherwise imported, and upon which duty has been levied or is leviable under numbers 1 to 10, are purchased retail from the importer by a person lawfully entitled as aforesaid, in reasonable quantity for his own private use, the importer may apply to the Customs Collector for a refund or remission (as the case may be) of so much of duty thereon as is in excess of ten per cent. *ad valorem* ; and if such Collector is satisfied as to the identity of the articles, and that such importer is in other respects entitled to such refund or remission, he shall grant the same accordingly.

		Tariff Valuation. Rs. A.	Rate of duty.
11.	Gunpowder, all sorts	*ad valorem.*	10 per cent.
12.	All other sorts of arms, ammunition and military stores	Do.	Do.

THE INDIAN ARMS ACT, 1878.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this volume and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S. in Brevier Roman denotes the section and R in Brevier Roman denotes the Rule in the Indian Arms Rules, 1909.

A

Acquisition, Rules for, of rifles, App. *C*, **124—126.**

Act XXXI of 1860, places, in which is in force, *N—Q*, **20.**

S. 32 (2)—Sanction required to certain proceedings in places to which, applies. S. 29, **32.**

Act IV of 1884, Explosive Act—License under, has the effect of license under this Act, *F*, **6.**

Act VIII of 1894 (*Indian Tariff*), Articles which are arms, App. *D*, **126, 127.**

Aden, License for import by sea of arms etc. at, to be granted by whom, R. 9, **41.**

License for export by sea of arms etc. at the port of, by whom to be granted, R. 16, **44.**

License for export by sea of ammunition or military stores from, to any port in Native State or foreign territory, R. 17 (1), **45.**

Agent, Sale by, of license-holder, *U*, **23**; *O*, *P*, **11.**

Sale of arms by, of the authorized person, *S*, **28.**

Air gun, whether an arm, *S*, *T*, **9.**

Ajmere Merwara, License for import by land or river otherwise than into, of arms etc. to be granted by whom, R. 11, **42.**

License for import into, of arms etc. by whom to be granted, R. 12, **42, 43.**

License for export by land or river of arms etc., out of, R. 18, **47.**

Akyab, License for import by sea of saltpetre or lead at, to be granted by whom, R. 9, **41.**

Ammunition, On board any sea going vessel saved from the Act, S. 1, **5.**

Definition of, S. 4, **8.**

Meaning of, *G*, **10.**

Instances, *G—J*, **10.**

Unlicensed possession of, S. 14, **18.**

of which possession has become unlawful to be deposited at police-station, S. 16, **20.**

See PENALTIES, S. 19 (*a*), **23.**

Concealing or attempting to conceal on search, S. 20, **26.**

Possession of, R. 26, **54.**

Persons or class of persons exempted in respect of, Sch. I, **64—75.**

Ammunition—(Concluded).

Exempted from prohibitions in the Act within certain areas, Sch. II, **81—83.**

Exempted from prohibitions and directions contained in S. 6, Sch. III, **83.**

Parts of British India withdrawn in respect of, from prohibitions in the Act, Sch. IV, **84—86.**

See ARMS.

See DETAIN.

See IMPORT, EXPORT, LICENSE.

Application, Particulars to be stated in, for license, R. 34, **59, 60.**

Arabia, License for export to a port on the sea-board of, when shall not be granted, R. 17 (2), **46.**

Areas, exempted from prohibitions in respect of arms, ammunition and military stores, Sch. II, **81—83.**

Parts of British India withdrawn is respect of arms and ammunition from prohibitions in the Act, Sch. IV, **84—86.**

Arms, On board any sea-going vessel saved from the Act, S. 1, **5.**

Officers authorized to carry arms, *I*, **6.**

Definition of, S. 4, **8.**

Definition not exhaustive, *M*, *N*, **8.**

Battle axe is an, *O*, **8.**

Big clasp knife is no, *P*, **8.**

Instances of, *O—F*, **8—10.**

Power to prohibit or regulate transport of, S. 10, **15.**

Transhipment of, S. 10, **15.**

Arrest of persons conveying, under suspicious circumstances, S. 12, **15.**

Possession of, other than those mentioned in, S. 14, *C*, **18.**

Possession of, of any description without license prohibited in certain places, S. 15, **19.**

Of which possession has become unlawful to be deposited at police-station, S. 16, **20.**

See PENALTIES, S. 19 (a), **23.**

Carrying—Presumption of intention, *W*, **24.**

Carried by servants of exempted persons, *Z—A*, **24**; *E*, *F*, **25.**

Found in common room of a house occupied by father and son. *G*, **25.**

Without license collected for worship in temple, *H*, **25.**

See LICENSE, *J*, **25, 26.**

Concealing or attempting to conceal, on search, S. 20, **26.**

Search and seizure of, in houses when can be made, S, 25, **29.**

Seizure and detention by Local Government, S. 26, **31.**

License for import of, from Portuguese India not to be granted, R. 7, **40.**

Possession of, R. 26, **54.**

Persons or classs of persons exempted in respect of, Sch. I, **64—75.**

Exempted from prohibitions in the Act within certain areas, Sch. II, **81—83.**

Exempted from prohibitions and directions contained in, S. 6, Sch. III, **83.**

Parts of British India withdrawn in respect of, from prohibitions in the Act, Sch. IV, **84—86.**

Articles which are arms, App. D, **126, 127.**

See IMPORT, EXPORT, LICENSE, DETAIN.

Arrest, Procedure where, made by a person not a Magistrate or a police officer, S. 12, **15.**
of persons conveying arms etc., under suspicious circumstances, S. 12, **15.**
Arrows, are arms, S. 4, **8.**
Attempt, to conceal arms etc., on search, S. 20, **26.**

B

Bail, Offences under S. 19 are bailable, *S*, **23.**
Balled ammunition, License for possession by dealers of, R. 31, **57.**
Battle axe, is an arm, *O*, **8.**
Bayonets, are arms, S. 4, **8.**
Big clasp knife, is no arm, *P*, **8.**
Bimlipatam, License for import by sea of arms etc., from port of, R. 10, **41.**
Bombay, Import of arms etc., by sea from, into certain ports, R. 10, **41.**
License for export by sea of ammunition or military stores from, to any port in Native State or foreign territory, R. 17 (1), **45.**
Bows, are arms, S. 4, **8.**
British India, Meaning of, *D*, **5.**
Scope of the term, *E*, **6.**

C

Calcutta, Premises of licensed dealer in arms in, *I*, **14.**
License for export by sea of ammunition or military stores from, to any port in Native State or foreign territory, R. 17 (1), **45.**
Calicut, License for import by sea of arms etc., at, to be granted by whom, R. 9, **41.**
License for export by sea of arms etc., at the port of, by whom to be granted, R. 16, **44.**
License for export by sea of ammunition or military stores from, to any port in Native State or foreign territory, R. 17 (1), **45.**
Cancelling, of license, S. 18, **22.**
Cannon, Definition of, S. 4, **8.**
Unlicensed possession of, S. 14, **18.**
License for import of, when can be granted, R. 6 (1), **39.**
License for transport of, to be granted by whom, R. 21 (1), **50.**
License for possession of, by whom to be granted, R. 25, **53**, **54.**
Carrier, Employees in public, to give information of offences under the Act, S. 28, **32.**
Census, Power to take, of fire-arms, S. 32, **34.**
Chhavi-heads, whether arms, *F*, **10.**
Class of persons, exempted in respect of arms and ammunition, Sch. *I*, **64—75.**
Cocanada, License for import by sea of arms etc , from port of Madras into the port of, R. 10, **41.**
Cochin, License for import by sea of arms etc., from port of Madras into the port of, R. 10, **41.**
Collection, of fees payable for license, R. 41, **63.**
and refund of fees, R. 41, **63.**
Commencement, of Act, S. 2, **7.**
Commissioned Officer, Exemption of the, of the Native Army, *I*, **19.**

Common room, Arms found in, of a house occupied by father and son, *G*, **25.**
Concealing, Penalty for, arms etc., on search, S. 20, **26.**
Concealment, what amounts to, in S. 20 (2), *N*, **27.**
of fire-arms under heap of straw, *O*, **27.**
Conditions, of license granted under R. 6, 21, **25—93.**
——————R. 9, **10—94.**
——————R. 11, **95.**
——————R. 12, **96.**
——————R. 16, **97.**
——————R. 17, **98.**
——————R. 18, **99.**
——————R. 22, **100.**
——————R. 32 (1), **101.**
——————R. 32 (2), **102.**
——————R. 24 (1) (*a*), **104.**
——————R. 24 (1)a(*b*), **106, 107.**
——————R. 24 (2) (*a*), **109.**
——————R. 24 (2) (*b*), **111.**
——————R. 26, **112.**
Confiscate, Power to, S. 24, **28.**
Confiscation, Articles which are mere curiosities not liable to, *W*, **28** .
Order for, can be made only on conviction, *V*, **29.**
Discretionary power of, to be considerately used, *X*, **29.**
Consent, necessary for grant of licenses in certain cases, R. 33, **58.**
Contractors, Possession and transport by, R. 32, **57.**
See FORM.
Control, of authorities empowered to grant licenses, R. 37, **60, 61.**
over arms found in common room of a house occupied by father and son, *G*, **25.**
Conversion, of arms, ammunition by order of Govt., S. 1, **5.**
——————-- by a public servant, S. 1, **5.**
——————-- by a volunteer, S. 1, **5.**
of arms etc. without license prohibited, S. 5, **11.**
of match-lock into percussion-gun—Legality, *R*, **12.**
See PENALTIES, S. 19 (*a*), **23.**
License for, of arms, ammunition or military stores, R. 24, **52, 53.**
Conveying, Arms etc., under suspicious circumstances, S. 12, **15.**
Conviction, Order for confiscation can be made on, *V*, **29.**
Court, Ordering sale giving notice to Magistrate, *X*, **12.**
District Magistrate when granting license is not a, *R*, **22.**
Power of, to confiscate arms, etc. S. 24, **28.**
Crim. Pro. Code, S. 184—Offences under Act triable in Presidency town, *H*, **6.**
Crops, Going armed for protection of, R. 29, **56.**
Possession of arms etc., for protection of, R. 29, **56.**
Cultivators, Possession and transport by, R. 32, **57.**
Curiosities, ARMS that are mere, not liable to confiscation, *W*, **28.**

D

Dagger, shaped clasp knife, sale of, *U*, **12**.

Daggers, are arms, S. 4, **8**.

Dealers, Possession by, of balled ammunition with liberty to import, R. 31, **57**.
See FORM.

Delivering, arms etc., to person not authorized to possess them, S. 22, **27**.

Delivery, of rifle into custody of servant not authorized to possess whether amounts to delivery into possession, *P*, *Q*, **27**.

For mere temporary possession not punishable, *U*, **28**.

of import licenses, R. 14, **43**, **44**.

of export licenses, R. 19, **48**.

of transport licenses, R. 23, **51**, **52**.

Deposit, Arms of which possession has become unlawful to be deposited at police station S. 16, **20**.

Penalty for failing to, arms etc.,—as required by Ss. 14 & 16—S. 19 (i), **23**.

Detain, Officers empowered to, arms and ammunition, *D—H*, **14**.

Detention, of arms etc., by Magistrate, S. 25, **29**.

of arms etc., by Local Government, S. 26, **31**.

Disarm, Officers empowered to, persons going armed without license, *V—A*, **17**, **18**.

Discretion, of authorities empowered to grant licenses, R. 37, **60**, **61**.

Display, possession of arms etc., and going armed for, R. 27, **54**, **55**.
See FORM.

District Magistrate, When granting license is not a Court, *R*, **22**.

Duplicates, Fees payable for, of licenses, R. 40, **63**.

Duration, of licenses, R. 36, **60**.

Duty, Exemption of public servant or volunteer manufacturing etc, arms in course of his, S. 1, **5**.

Officers to carry arms for performance of their, *I*, **6**.

of officer or soldier wishing to dispose of arms or ammunition, *S*, **12**.

Dynamite, Ammunition includes, S. 4, **8**.

E

Empty cartridge cases, not ammunition, *H*, **10**.

in which caps have been exploded, *I*, **10**.

Exclusion, of arms and ammunition from prohibitions, R. 3, **39**.

Exemptions, From the operation of Act, S. 1, **5**.

Postal employees exempted from taking license, *J*, *J*1, **7**.

Going armed with spears in Bombay Presidency, *Q*, **16**.

for personal use—Servant carrying arms—Legality, *S*, **17**.

of ' reservists ' from the operation of S. 14, *G*, **19**.

of volunteers from the operation of S. 14, *H*, **19**.

of the Commissioned Officer of the Native Army, *I*, **19**.

for personal use—Servant not exempted, *X*, **24**.

Power to exempt class of persons or description of arms etc, from prohibition in the Act, S. 27, **31**.

Exemptions—(Concluded).
of persons from prohibitions—Rules, R. 3, **39.**
from fees, for licenses, *M*, *N*, **63.**
Persons or class of persons exempted in respect of arms and ammunition, Sch. I, **64—75.**
Officers exempted in respect of arms and ammunition, **76—78.**
Export, of arms, ammunition by order of Govt, S. 1, **5.**
——————————by a public servant, S. 1, **5,**
——————————by a volunteer, S. 1, **5.**
Penalty for, of arms etc., contrary to S. 6, S. 19 (*c*), **23.**
Delivery of, of licenses, R. 19, **48.**
Officers empowered to grant license for, by sea to ports in Native States or foreign territory, Sch. V, **86, 87.**
See LICENSE.
Exportation, Meaning of, S. 6, **13.**
Unlicensed, of ammunition etc, into British India prohibited, S. 6, **13.**
of arms etc, for private use, S. 6, *Z*, **13.**
Export license, Delivery of, R. 19, **48.**
Notifications concerning, *Y—A*, **49.**
Extension, of S. 15, *K*, *L*, **19.**
Extent, Local, of Act, S. 1, *A—C*, **5.**

F

False entry, See PENALTIES, S. 19 (*g*), **23.**
Fee, for license granted under R. 9 (1) (*d*)—Sch. VII, **94.**
——————————R. 10, Sch. VII, **94.**
——————————R. 11, Sch. VII, **95.**
——————————R. 12, Sch. VII, **96.**
——————————R. 16, Sch. VII, **97.**
——————————R. 17, Sch. VII, **98.**
for license under R. 18, Sch. VII, **99.**
——————————R. 22, Sch. VII, **100.**
——————————R. 24 (1) (*a*)—Sch. VII, **103.**
——————————R. 24 (1) (*b*)—Sch. VII, **105.**
——————————R. 24 (2) (*a*)—Sch. VII, **108.**
——————————R. 24 (2) (*b*)—Sch. VII, **110.**
no, for license under R. 26, **112.**
for license under R. 27, **113.**
no, for license under R. 28, **115, 116.**
no, for license under R. 29, **116.**
for license under R. 30, **117.**
——————————R. 32 (1)—Sch. VII, **101.**
——————————R. 32 (2)—Sch. VII, **102.**
Fees, Payable for licenses, R. 39, **61, 62.**
Exemption from, *M*, *N*, **63.**
payable for duplicates, R. 40, **63.**

Firearms, are arms, S. 4, **8.**

Unserviceable, whether arms, *V—D*, **9**, **10.**

Unlicensed possession of, S. 14, **18.**

What are, *R*, **18.**

Concealment of, under heap of straw, *O*, **27.**

Power to take census of, S. 32, **34.**

Fire works, Rockets which are, are not ammunition, *K*, **11.**

Manufacture or possession of, not prohibited, *U*, **12.**

Foreign territory, License for export by sea or arms etc., from certain port to ports in, by whom to be granted, R. 17, **45.**

Officers empowered to grant licenses for export by sea to ports in, Sch. V, **86**, **87.**

Form, of license for import of cannon, Sch. VII, **93.**

of licence for transport of cannon, Sch. VII, **93.**

of licence for possession of cannon, Sch. VII, **93.**

articles for torpedo service, war rockets, Sch. VII, **93.**

of licenses, R. 35, 60, **93—118.**

of license for import of arms, ammunition and military stores, Sch, VII, **94.**

of license for import of arms etc., by land or river otherwise than in Ajmer-Merwara, Sch. VII, **95.**

of license for import of arms etc., into Ajmer-Merwara, Sch. VII, **96.**

of license for export by sea of arms etc., from port to port under R. 16—Sch. VII, **97.**

of license for export by sea of arms etc., from port to port under R. 17—Sch. VII, **98.**

of license for export by land or river under R. 18, Sch. VII, **99.**

of license for transport of arms etc. under R. 18, Sch. VII, **100.**

of license for possession and transport of gun-powder etc., under R. 32 (1), Sch. VII, **101.**

of general license to dealers in explosive contractors and mining agents, Sch. VII, **102.**

of license to transport blasting materials, Sch. VII, **102.**

of license to manufacture etc., arms etc., Sch. VII, **103.**

for renewal of license under R. 24, Sch. VII, **103.**

of license under R. 24 (1) (*b*) Sch. VII, **105.**

of renewal of license under R. 24 (1) (*b*) Sch. VII, **106.**

of license under R. 24 (2) (*a*)—**108.**

of renewal of license under R. 24 (2) (*a*), **108.**

of license to keep and sell breach-loading rifles, **110**,

of renewal of license under R. 24 (2) (*b*), **110.**

of license for possession of fire arms, ammunition or military stores, **112.**

of license for possession of arms and ammunition and for going armed for *sport*, protection, display, **113.**

for renewal of license under R. 27, **113.**

of license for possession of arms and going armed for destruction of wild animals, **115, 116.**

of license for going armed on journey, **117.**

Friction tubes, Ammunition includes, S. 4, **8.**

Fuses, Ammunition includes, S. 4, **8.**

G

Going armed, without license prohibited, S. 13, **16**.
Meaning of, *J*, *K*, **16**.
What amounts to, *L*, **16**.
with spears—Exemption in Bombay Presidency, *Q*, **16**.
Person found,—Presumption, *R*, **17**.
Officers empowered to disarm persons, without license, *V—A*, **17**, **18**.
Penalty for, against S. 13, S. 19 (*e*), **23**.
License for, for purposes of sport, protection or display, R. 27, **54**.
License for, for destruction of wild animals, R. 28, **56**.
for protection of crops, R. 29, **56**.
License for, on a journey, R. 30, **56**.
See FORM.
Gopalpore, License for import by sea of arms etc., from port of Madras into the port of R 10, **41**.
Government, Sale etc., of arms etc. by order of, S. 1, **5**.
sale of arms conducted by officers of, *T*, **12**.
Governor-General-in-Council, power of, to make exemptions from the prohibitions under the Act, S. 27, **31**.
Grounds, Recording, of belief, for search, *Y*, *Y4*, **29**, **30**.
Gun cotton, Ammunition includes, S. 4, **8**.
Gun flints, Ammunition includes, S. 4, **8**.
Gunpowder, is ammunition, *G*, **10**.
Possession of, without license, *L*, **26**.
Gunwards, Ammunition includes, S. 4, **8**.

H

Hindu family, Possession of fire arms by a member of a joint,—Amount of proof, *F*, **18**.
Howitzers, are cannon, S. 4, **8**.

I

Import, of arms, ammunition by order of Govt. S. 1, **5**.
————————-by a public servant, S. 1, **5**.
————————-by a volunteer, S. 1, **5**.
Penalty for, of arms etc., contrary to S. 6, S. 19 (*c*), **23**.
Restriction upon, of cannon and certain other articles—Rules, R. 6, **39**, **40**.
License not to be granted for, of arms, etc , from Portuguese India, R. 7, **40**.
Restriction upon, of certain rifles, R. 8, **40**.
Rifles of prohibited bores imported into India where to be kept, *X*, **40**.
License for, of arms etc., at Presidency-town and at Rangoon, *R*, **41**.
License for, of arms etc., at Calicut, Karachi and Aden, R. 9, **41**.
License for, of saltpetre or lead at Akyab and Moulmein, R. 9, **41**.
License for, of sulphur at Tuticorin, R. 9, **41**.
of arms, etc., by sea from Madras, Rangoon or Bombay, R. 10, **41**.

Import—(Concluded).

by land or river of arms etc., otherwise than into Ajmer—Merwara, R. 11, **42.**

or arms etc., from Native State, R. 11 (3), **42.**

by road or river of arms etc., to a district not on the frontier of British India, R. 11 (4), **42.**

by rail of arms etc., R. 11 (5), **42.**

of arms etc., into Ajmere—Merwara, R. 12, **42, 43.**

See FORM.

Importation, Meaning of, S. 6, **13.**

Unlicensed, of ammunition etc., into British India prohibited, S. 6, **13.**

of arms etc., for private use,, S. 6, *Z*, **13.**

Masonic swords not imported for sale, *B*, **13.**

Import license, Production and delivery of, R. 14, **43, 44.**

Information, to Police Officer or Magistrate to be given regarding offences under the Act, S. 28, **32.**

Intention, Presumption of, of person carrying arms, *W*, **24.**

Iron droppings, are ammunition, *J*, **10.**

J

Jurisdiction, See ACT V OF 1898, S. 184.

Journey, License for going armed on a, R. 30, **56.**

See FORM

K

Karachi, License for import by sea arms etc, at. to be granted by whom, R. 9, **41.**

License for export by sea of arms etc., at the port of, by whom to be granted, R. 16, **44.**

License for export by sea of ammunition or military stores from, to any port in Native State or foreign territory, R. 17 (1), **45.**

Katyars, excluded from operation of Act, *L*, **7.**

Keeping, of arms etc., without license prohibited, S. 5, **11.**

Keeping for sale, License for, of arms, ammunition or military stores, R. 24, **52, 53.**

Kandesh, Saltpetre in, district, *K*, **26.**

Knife, See DAGGER.

L

Land, See IMPORT, EXPORT, LICENSE **310.**

Language, of licenses, R. 35, **60.**

Lead is no ammunition S. 4. **8.**

See IMPORT.

Lead cutting sword, imported by Native Cavalry regiments exempted, *K*, **7.**

License, Penalty for breach of, S. 21, **27.**

Definition of, S. 4, **8.**

need not be always on the person carrying arms, *P*, **16.**

Going armed without, prohibited, S. 13, **16.**

to carry arms for some special purpose—Carrying arms for some other purpose, *T*, **17.**

need not be taken by the licensee wherever he goes, *U*, **17.**

License—(Continued).

Officers empowered to disarm persons going armed without, *V—A*, **17, 18.**

Possession of fire-arms etc., without, S. 14, **18.**

Possession of arms of any description without, prohibited in certain places. S. 15, **19.**

Power to make rules as to, S. 17, **21.**

District Magistrate when granting, is not a Court, *R*, **22.**

cancelling and suspension of, S. 18, **22.**

Arms without, collected for worship in temple, *H*, **25.**

Possession of revolver out of repair without, *H*, **25.**

Renewal of, extending time, *I*, **25.**

Possession of, or control over arms etc., without, *J*, **25, 26.**

Possession of gunpowder without, *L*, **26.**

Purchase of arm etc., from person not licenced, S. 22, **27.**

Necessary for custody of arms in temple, *M*, **32.**

for the import of cannon and other articles—Rules, R, 6 (1), **39.**

Copy of, granted under R. 6 (1) to whom should be sent, R. 6 (2), **40.**

not to be granted for import of arms from Portuguese India, R. 7, **40.**

for import by sea of arms etc., from Madras, Rangoon or Bombay, R. 10, **41.**

Copy of, to be sent to Political Agent where arms etc., are imported from Native State, R. 11 (3), **42.**

for import by land or river, otherwise than into Ajmer—Merwara of arms etc., to be granted by whom, R. 11, **42.**

for import into Ajmer—Merwara of arms etc., by whom to be granted, R. 12, **42, 43.**

for export by sea of cannon and certain rifles, R. 15, **44.**

for export by sea of arms from and to certain ports, R, 16, **44.**

for export by sea of arms ammunition and stores to ports in Native States or foreign territory, R. 17, **45.**

Copy of, granted under R. 17 (1) to whom should be sent, R. 17 (3,4), **46.**

for the report by land or river of arms etc., to Native States or out of Ajmer—Merwara by whom to be granted, R. 18 (1), **47.**

for export of arms etc., by rail, R. 18, **47.**

Delivery of export, R. 19, **48.**

Prohibition of transport of arms etc., otherwise than under, R. 20 (1), **49.**

for transport of cannon and certain other articles to be granted by whom, R. 21 (1), **50.**

for transport of arms, ammunition and military stores, R. 22, **51.**

Delivery of transport, R. 23, **51, 52.**

for manufacture, conversion, sale and keeping for sale of arms, ammunition or military stores, R. 24, **52, 53.**

for possession of cannon, war-rockets etc., by whom to be granted, R. 25, **53, 54.**

Copy of, granted under R. 25 (1), to whom should be sent, R. 25 (2), **54.**

for going armed for purposes of sports, protection or display, R. 27, **54.**

License--(Concluded).

for possession of arms etc., for sport protection or display, R. 27, **54**, **55**.

for going armed for destruction of wild animals, R. 28, **56**.

for possession of arms and ammunition for destruction of wild animals, R. 28, **56**.

for possession of arms for protection of crops, R. 29, **56**.

for going armed for protection of crops, R. 29, **56**.

for going armed on a journey, R. 30, **56**.

for possession by dealers of balled ammunition, R. 31, **57**.

for possession and transport by cultivators and contractors, R. 32, **57**.

Consent or previous sanction necessary for grant of, in certain cases, R. 33, **58**.

Particulars to be stated in application for license, R. 34, **59**, **60**.

Form and language of licenses, R. 35, **60**.

Duration and renewal of, R. 36, **60**.

Discretion and control of authorities empowered to grant, R. 37, **60**, **61**.

Obligation to produce, R. 38, **61**.

fees payable for, R. 39, **61**, **62**.

See FEE.

Officers empowered to grant, for export by a sea to ports in Native States or to foreign territory, Sch. V, **86**, **87**.

Officers empowered to grant, for export by land or river to any place beyond British-India, Sch. VI, **88**—**92**.

See EXEMPTION.

See EXPLOSIVES ACT.

See FORM.

Licensed, means holding license, S. 4, **8**.

Limitation, of proceedings for anything done under the Act, S.33, **34**.

Lithofracteur, Ammunition includes, S. 4, **8**.

Long handled gandasas, are arms, *U*, **9**.

M

Machine-guns, are cannon, S. 4, **8**.

Machinary, Ammunition includes, for manufacturing ammunition, S. 4, 8.

for manufacturing arms are arms, S. 4, **8**.

Instrument for recapping cartridge cases is no, *M*, **11**.

License for import of, for manufacturing arms or ammunition, R.6 (1), **39**.

License for transport of, for manufacture of arms etc., R. 21, **50**.

Madras, Import of arms etc. by sea from, into certain ports, R.10, **41**.

License for export by sea of ammunition or military stores from, to any port in Native State or foreign territory, R. 17, (1), **45**.

Magistrate, Power of, to confiscate arms, etc., S. 24, **28**.

Search and seizure of arms by, when can be made, S. 25, **29**.

Mangalore, License for import by sea of arms etc., from port of Madras into the port of, R. 10, **41**.

Manufacture, of arms, ammunition by order of Govt. S 1, **5**,
——————————by a public servant, S. 1, **5**.
——————————by a volunteer, S. 1, **5**.
of arms etc., without license prohibited, S. 5, **11**.
See PENALTIES, S. 19 (*a*), **23**.
License for, of arms, ammunition or military stores, R. 24, **52**, **53**.
Marriage procession, Weapon carried in, in Sind, *C*, **14**.
Masonic swords, not imported for sale, *B*. **13**.
Master, when liable to acts of servants, *R*, **28**.
Masulipatam, License for import by sea of arms etc., from port of Madras into the port of, R. 10, **41**.
Military stores, On board any sea going vessel saved from the Act, S. 1, **5**.
Definition of, S. 4, **8**.
Unlicensed possession of, S. 14, **18**.
of which possession has become unlawful to be deposited at police-station. S. 16, **20**.
See PENALTIES S. 19 (*a*), **23**.
Possession of, R. 26, **54**.
Exempted from prohibitions in the Act within certain arears Sch. II. **81—83**.
Exempted from prohibitions and directions contained in S.6, Sch. III, **83**.
See ARMS.
See IMPORT, EXPORT, LICENSE.
Mining agents, See FORM
Mitraillenses, are cannon, S. 4, **8**.
Mortars are cannon, S. 4, **8**.
Moulmein, License for import by sea of saltpetre or lead at, to be granted by whom, R. 9, **41**.
Moyapur, Warehouse at, *H*, **14**.

N

Native army, Exemption of Commissioned Officer in, *I*, **19**.
Native States, Copy of license to be sent to Political Agent where arms etc., are imported from, R. 11 (3), **42**.
License for export by sea of arms etc. from certain ports to ports in, by whom to be granted, R. 17, **45**.
License for export by land or river of arms etc., to, R. 18, **47**.
Officers empowered to grant licenses for export by sea to ports in, Sch. V, **86**, **87**.
Nazir, Sale of arms by, in execution of a decree, *G*, **6**.
Negapatam, License for import by sea of arms etc. from port of Madras into the port of, R. 10, **41**.
Notice, of sale by a licensee, S. 5. **11**.
Sale before permission from Magistrate but after, *W*, **12**.
Court ordering sale giving, to Magistrate—Propriety, *X*, **12**.
Penalty for failure to give, required by S. 5, S. 19 (b), **23**.
Necessity of, for commencement of proceedings for anything done under the Act, S. 33, **34**.
of suit not necessary, S. 33, **34**.

Notification, empowering officers to disarm persons going armed without license, *V—A*, **17**, **18**.

as to cancellation and suspension of license, **22**.

Cancellation of, made under the Act; S. 27, **31**.

exempting persons or arms from any prohibition under the Act, S. 27, **31**.

Notifications, concerning delivery of export licenses, *Y—A*, **49**.

Concerning delivery of transport licenses, *B—D*, **52**.

concerning possession of arms etc., and going armed for sport, protection or display, *E—I*, **55**.

Concerning licenses for going armed on a journey, *J*, **57**.

Concerning licenses to possess blasting powder and fuses, *L*, **58**.

concerning persons exempted in respect of arms and ammunition, Sch. I. **75**, **76**; **79**, **80**.

O

Occasions, at which carrying arms is necessary, *I*, **6**.

Offence, under S. 19 bailable, *S*, **23**.

Carrying spear no, under, S. 19 (*e*), *Y*, **24**.

Offences, See SANCTION.

See RAILWAY, S. 28, **32**.

Information to be given to Police Officer or Magistrate regarding, under the Act, S. 28, **32**.

Officers, to carry arms for performance of their duty, *I*, **6**.

empowered to detain arms and ammunition, *D—H*, **14**.

empowered to disarm persons going armed without or in contravention of license, *V—A*, **17**, **18**.

empowered to conduct searches, *F—J*, **31**.

in whose presence searches in respect of offences under, S, 19 (f) may be made, *R—W*, **33**, **34**.

exempted in respect of arms and ammunition, **76—78**.

empowered to grant licenses for export by sea to ports in Native States or to foreign territory, Sch. V, **86**, **87**.

empowered to grant licenses for export by land or river to any place beyond British India Sch. VI, **88—92**.

Onus, of proving reasonable excuse for not giving information in respect of offences under the Act, S. 28, **32**.

Other laws, Operation of, not barred by the Act, S. 31, **34**.

P

Pamban, License for import by sea of arms etc., from port of Madras into the port of, R. 10, **41**.

Particulars, to be stated in applications for licenses, R. 34, **59**, **60**.

Parts of ammunition, Meaning of, *L*, **11**.

Pellets, are ammunition, *J*, **10**.

Penalties, for failing to deposit arm etc., required by, Ss. 14 and 16.—S, 19 (1), **23.**

for manufacturing, selling etc , arms, ammunition or military stores in contravention of, S. 5—S. 19 (*a*), **23.**

for failing to give notice required by S. 5.—S. 19 (*b*), **23.**

for importing or exporting arms in contravention of, S. 6—S. 19 (*c*), **23.**

for transporting arms, ammunition etc., in contravention of regulation or prohibition under, S. 10—S. 19 (*d*), **23.**

for making false entry in record or account—against S. 17 (*c*)—S. 19 (*g*), **23.**

for going armed in contravention of, S. 13—S. 19 (*e*), **23.**

for having in possession or under control arms etc., in contravention of Ss. 14 & 15—S. 19 (*f*), **23.**

for failing to exhibit anything required under, S. 17 (*c*)—S. 19 (*h*), **23.**

for secret breaches of Ss. 5, 6, 10, 14 & I5—S. 20, **26.**

for concealing arms etc., on search, S. 20, **26.**

for breach of license, S. 21, **27.**

for breach of rule for breach of which no penalty is provided, S. 23, **28.**

for refusing or neglecting to produce fire-arms when required, S. 32, **34.**

Percussion caps, Ammunition includes, S. 4. **8.**

Personal use, meaning of, *S*, **17.**

Exemption for,—Servant carrying arms—Legality, *S*, **17.**

See EPEMPTION, *X*, **24.**

Exemption for—Meaning, *L*, 32.

Persons exempted, in respect of arms and ammunition, Sch. I, **64—75.**

Police station, Arms of which possession has become unlawful to be deposited in, S. 16, **20.**

Portuguese India, License not to be granted for import of arms etc., from, R. 7, **40.**

Possess, Lawfully entitled to, meaning of in, S. 6, *A*, **13.**

Possession of arms, ammunition by order of Govt., S. 1, **5.**

——————————— a public servant, S. 1, **5.**

——————————— a volunteer, S. 1, **5.**

of arms other than those mentioned in, S. I4, *C*, **18.**

What constitutes, *D*, **18.**

with a member of a joint Hindu family—Amount of proof, *F*, **18.**

Unlicensed, of fire-arms etc., S. 14, **18.**

of arms of any description without license prohibited in certain places, S. 15, **19.**

Penalty for, of arms etc., against Ss. 14 and 15—S. 19 (*f*), **23.**

Arms found in common room of a house occupied by father and son, *G*. **25,**

Having in, arms etc., without license, *J*, **25, 26.**

See DELIVERY, *P*, *Q*, **27.**

See TRANSFER, *T*, **28.**

License for, of cannon, war-rockets etc., by whom to be granted, R. 25, **53, 54.**

of fire-arms, ammunition or military stores, R, 26, **54.**

of arms and ammunition for sport, protection or display, R. 27, **54, 55.**

License for, of arms and ammunition for destruction of wild animals, R. 28, **56.**

Possession—(Concluded).

of arms and ammunition for protection of crops, R. 29, **56**.

by dealers of balled ammunition with liberty to import, R. 31, **57**.

by cultivators and contractors, R. 32, **57**.

Rules for, of rifles, App. *C*, **124—126**.

See FORM, REPAIR, TEMPORARY POSSESSION.

Postal employees, exempted from taking license, *J—J1*, **7**.

Presidency town, Offence under the Act triable in, *H*, **6**.

License for import by sea of arms etc., at, to be granted by whom, R. 9, **41**.

License for import by land or river of arms etc., to be granted by whom, R. 11, **42**.

License for export by sea of arms etc., at the port of, by whom to be granted, R. 16, **44**.

Presumption, Person found going about armed, *R*, **17**.

of intention of person carrying arms, *W*, **24**.

Private use, importation and exportation of arms for, S. 6, *Z—A*, **13**.

Private warehouse, See WAREHOUSE.

Procedure, Where arrest made by a person not a Magistrate or Police officer, S. 12, **15**.

Production, of imports licenses, R. 14, **43**, **44**.

Obligation to produce licenses, R. 38, **61**.

Prohibition, of transport of arms etc., otherwise than under license, R. 20 (1), **49**.

See ARMS.

Prohibitions, on persons or class of persons in respect of arms and ammunition, Sch. I, **64—75**.

Exemption from, within certain cases in respect of arms, ammunition and military stores, Sch. II, **81—83**.

Parts of British India withdrawn in respect of arms and ammunition from, Sch. IV, **84—86**.

Protection, Possession of arms etc., and going armed for, R. 27, **54**, **55**.

See FORM.

Public servant, Sale etc., of arms etc., by, S. 1, 5 ; *G*, **6**.

Purchase, of arms etc., from unlicensed or unauthorized person, S. 22 (1), **27**.

R

Rail, See IMPORT, EXPORT.

Railway, Employees in, to give information of offences under the Act, S. 28, **32**.

Railway authorities, Scrutiny by, of consignments, R. 13, **43**.

Rangoon, License for import by sea of arms etc., to be granted by whom, R. 9, **41**.

Import of arms etc., by sea from, into certain ports, R. 10, **41**.

License for import by land or river of arms etc., to be granted by whom, R. 11, **42**.

License for export by sea of arms etc., at the port of, by whom to be granted, R. 16, **44**.

License for export by sea of ammunition or military stores from, to any port in Native State or foreign territory, R. 17 (1), **45**.

Reasons, for search omitted to be recorded—Effect, *A*, **30**.

Refund, of fees payable for license, R. 41, **63**.

Renewal, of license extending time, *I*, **25**.

of licenses, R. 36 **60**.

Repair, of arms not illegal, *Q*, **12**.

Possession of revolver out of, without license, *H*, **25**.

Import of arms for purposes of, R. 11 (2), **42**.

Repeal, of enactments, S. 3, **7**.

Reservist, Possession of gun by. no offence, *C*, **24**.

Reservists, Exemption of, from the operation of, S. 14, *G*, **19**.

Restriction, on the powers of Governor-General-in-Council, *K*, **32**.

upon import of arms, etc., from Portuguese India, R. 7, **40**.

upon import of certain rifles, R. 8, **40**.

upon import of cannon and other articles—Rules, R. 6, **39, 40**.

upon transport of cannon and certain other articles granted, R. 21, **50**.

upon possession of cannon and certain other articles, R. 25, **53, 54**.

Restrictions, on persons or class of persons in respect of arms and ammunition, Sch. I, **64—75**.

Rifles, Restriction upon import of certain, R. 8, **40**.

of prohibited bores imported into India where to be kept, *X*, **40**.

Rules for acquisition, possession and sale of, App. C, **124—126**.

River, See IMPORT, EXPORT.

See LICENSE.

Rockets, Ammunition includes, S. 4, **8**.

which are fire works not ammunition, *K*, **11**,

Rules, Power to make, as to licenses, S. 17, **21**.

Power to make, fixed period of license, S. 17, **21**.

————fixing fee payable for license, S. 17, **21**.

————, directing holder of license to keep record or account, S. 17, **21**.

————, empowering Government Officer to inspect premises, S. 17, **21**.

————, directing holders of license to exhibit stock of arms etc., S. 17, **21**.

————, requiring license holders to produce license, account etc., S. 17, **21**.

Penalty for breach of, for which no penaly is provided, S. 23, **28**.

exempting persons from prohibitions in the Act, R. 3, **39**.

withdrawing parts of British India from prohibitions in the Act, R. 3, **39**.

excluding arms and ammunition from prohibitions in the Act, R. 3, **39**.

Indian Arms, App. A. **37—63**.

regarding the grant of shooting passes, App. B. **119, 120**.

for acquisition, possession and sale of rifles, App. C, **124—126**.

S

Sale, of arms, ammunition by order of Govt., S. 1, **5**.
——————————by a public servant, S. 1, **5**.
——————————by a volunteer, S 1, **5**.
by licensee—Notice, S. 5, **11**.
of arms etc., without license prohibited, S. 5, **11**.
by licensee's agent not illegal, *O*, *P*, **11**.
of arms conducted by officers of Govt., *T*, **12**.
before permission from Magistrate but after notice, *W*, **12**.
See PENALTIES, S. 19 (*a*), **23**.
by agent of license-holder, *U*, **23**.
License for, of arms, ammunition or military stores, R. 24, **52**, **53**,
Rules for, rifles, App. *C*, **124—126**.

Saltpetre, is no ammunition, S. 4, **8**.
See IMPORT.

Sanction, of Local Government required to ware-housing of arms etc., S. 7, **14**.
necessary for conviction of offences under, S. 20, (1)—*M*, **26**.
required to certain proceedings under, S. 19 (*f*)—S. 29, **32**.
Want of. before instituting proceedings,—Effect, *N—Q*, **33**.
necessary for grant of license in certain cases, R. 33, **55**.

Sea, See IMPORT, EXPORT.
See VESSEL.

Search, Concealing or attempting to conceal arms, etc., on, S. 20, **26**.
of arms etc., in whose presence to be conducted, S. 25, **29**.
of premises for arms etc., when can be made, S. 25, **29**.
of arms etc., how to be conducted, S. 25, **29**.
Recording grounds of belief for, essential, *Y—Y4*, **29**, **30**.
Effect of omission to record reasons for, *A*, **30**.
by night, *C*, **30**.
Presence at the, of a specially empowered officer necessary, *D*, **30**.
How to decide whether a search is made under this Act or Cr. P.C., *E*, **30**, **31**.
Officers empowered to conduct, *F—J*, **31**.
in the case of offences against S. 19 (*f*), how conducted, S. 30, **33**.
in respect of offence under S. 19 (*f*) in whose presence to be made, *R—W*, **33**, **34**.

Searching posts, where shall be established, R. 5, **39**.

Searching stations, power to establish, S. 11, **15**.

Search warrant, in what cases to be issued, *B*, **30**.
Grounds for issuing, to be recorded, *Z*, **30**.

Secret, Penalties for, breaches of Ss. 5, 6, 10, 14 & 15—S. 20, **26**.

Seizure, of arms etc., by Magistrate when can be made, S. 25, **29**.
of arms etc., by Local Government, S. 26, **31**.

Servant, carrying arms for the use of his master, *M—O*, **16** ; *S*, **17**.
not exempted if exemption be for personal use, *X*, **24**.
Arms carried by, of exempted persons, *Z*, *A*, **24** ; *E*, *F*, **25**.
See DELIVERY, *P*, *Q*, **27**.
Master when liable to acts of, *R*, **28**.

Shooting passes, Rules and orders regarding the grant of. App. B. **119—124**.

Sind, See WEAPON.

Spear, Carrying, not an offence under S. 19 (e), *Y*, **24**.

Spear heads, are arms S. 4, **8**.

Spears, are arms, S. 4, **8**.

Sport, Possession of arms etc., and going armed for, R, 27, **54**, **55**.

See FORM.

Sulphur, is no ammunition, S. 4, **8**.

See IMPORT.

Suspension, of license, S. 18, **22**.

Suspicious, Conveying arms etc., under suspicious circumstances, S. 12, **15**.

Sword hilts, whether arms, *E*, **10**.

Swords, are arms, S. 4, **8**.

Sword stick, is an arm, *R*, **9**.

T

Table knife, is not an arm, *Q*, **9**.

Temple, Arms without license collected for worship in, *H*, **25**.

Custodians of the, where arms are kept to take out license, *M*, **32**.

Temporary possession, Mere, of arm for purposes other than its use not prohibited, *M—P*, **16**.

Mere, of gun not punishable, *E*, **18**.

of arms without license for purposes other than their use as such, *Z—B*, **24**.

Delivery for mere, not punishable, *U*, **28**.

Torpedo, Ammunition includes articles designed for, service, S. 4, **8**.

License for import of articles designed for, service, R. 6 (1), **39**.

License for transport of articles designed for, service, R. 21 (1), **50**.

License for possession of articles designed for, service, R. 25, **53**, **54**.

Transfer, What amounts to, of possession under, S. 22, *T*, **28**.

Transhipment, of arms, S. 10, **15**.

Transport, of arms, ammunition by order of Government, S. 1, **5**.

——————— by a public servant, S. 1, **5**.

——————— by a volunteer, S. 1, **5**.

Power to prohibit or regulate, S. 10, **15**.

Penalty for arms etc., contrary to S. 10, S. 19 (d), **23**.

Delivery of, licenses, *R*, **23**.

Prohibition of, of arms etc., otherwise than under license, R. 20 (1), **49**.

Registration upon, of cannon and certain other articles, R. 21, **50**.

by cultivators and contractors, R 32, **57**

See FORM

See LICENSE.

Transport license, Delivery of, R. 23, **51**, **52**.

Tuticorin, License for import of sulphur at, R. 9, **41**.

License for import by sea of arms etc., from port of Madras into the port of, R. 10, **41**.

U

Unlawful, See DEPOSIT.

Unlicensed, Manufacture, conversion and sale of arms etc., prohibited, S. 5, **11.**

importation and exportation prohibited, S. 6, *Y*, **13.**

V

Vessel, Arms etc., on board any sea-going, saved from the Act, S. 1, **5.**

Vizagapatam, License for import by sea of arms etc., from port of Madras into the port of, R. 10, **41.**

Volunteer, Sale etc., of arms etc., by a, enrolled under volunteers Act, S. 1, **5.**

Exemption of, from the operation of, S. 14—*II*, **19.**

can keep fire-arms, *D*, **24.**

Volunteers Act, Volunteer enrolled under, exempted, S. 1, **5.**

W

Wall pieces, are cannon, S. 4, **8.**

Warehouse, at Moyapur, *H*, **14.**

Premises of licensed dealar in Calcutta as a private, *I*, **14.**

Warehousing, Sanction required to, of arms etc., S. 7, *I*, **14**

War-rockets, License for import of, when can be granted, R. 6 (1), **39.**

License for transport of to be granted by whom, R. 21, **50.**

License for possession of, by whom to be granted, R. 25, **53, 54.**

Weapon, carried in Marriage procession in Sind, *C*. **14.**

Wild animals, Possession of arms etc., and going armed for destruction of, R. 28, **56**
See FORM.

Withdrawal, of parts of British India from prohibition—Rules, R. 3, **39.**

Withdrawn, Parties of Brittish India, in respect arms and ammunition from prohibitions contained in the Act, Sch. IV, **84—86.**

Worship, Collection of arms for, in a temple, *H*, **25.**

THE LAWYER'S COMPANION SERIES.

THE INDIAN OATHS ACT, 1873

(ACT X OF 1873).

(WITH THE CASE-LAW THEREON)

BY

T. V. SANJIVA ROW,

FIRST GRADE PLEADER, TRICHINOPOLY,

AUTHOR OF A "DIGEST OF PRIVY COUNCIL RULINGS"

THE "CURRENT INDEX OF INDIAN CASES,"

THE "LAWYER'S REFERENCE,"

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THE INDIAN OATHS ACT, 1873.

TABLE OF CASES NOTED IN THIS ACT.

				PAGE
		I. L. R. Allahabad Series.		
1 A 1 (13, 14 and 16), **(F.B.)**	...	Queen v. Gholam Ismail	...	19, 20
1 A 535	...	Waliullah v. Ghulam Ali	...	7, 24
2 A 260	...	Empress of India v. Asghar Ali	...	16
4 A 283	...	Bhagirath v. Ram Ghulam	.	7, 24, 25
4 A 302	...	Lekhraj Singh v. Dulhma Kuar	...	18, 24
6 A 487 (488)	...	Queen-Empress v. Sheodihal Rai	...	20
10 A 207 (213)	...	——————— v. Maru		5, 6, 8, 9, 10, 11, 17
11 A 183 (185)	...	——————— v. Lal Sahai	...	8, 10, 11
13 A 386	...	Mahabir Prasad Singh v. Mahadeo Dat Misr	...	28
14 A 141	...	Muhammad Zahur v. Cheda Lal	...	26
18 A 46 (48)	...	Ram Narain Singh v. Babu Singh	...	21, 23
19 A 200	...	Barkat, *In the matter of the petition of*	...	14
20 A 426	...	Queen-Empress v. Tirbeni Sahai	...	13, 15
21 A 107	...	——————— v. Mutasaddi Lal	...	13
23 A 90 (92)	...	——————— v. Ram Sewak	...	9
25 A 375	...	Emperor v Girand	...	13
26 A 371	...	——————— v. Ghulam Mustafa	...	7
29 A 49	...	Chiddu v. Kunwar Sen	...	23
31 A 315	...	Chedi Lal v. Jwala Prasad	...	27, 32
		I. L. R. Bombay Series.		
1 B 610 (618)	...	Reg v. Hamanta	...	16
10 B 190	...	Queen-Empress v. Dala Jiva	...	16
11 B 659	...	——————— v. Ismail	...	20
11 B 702 (704) **(F.B.)**		——————— v Bharma Bin Ningappa	...	7, 20
12 B 36 (48)	...	——————— v. Tulja	...	19, 20
13 B 389 (391)	...	——————— v. Murarji Gokuldas	...	18
14 B 455 (458)	...	Sadashiv Rayaji v. Muruti Vithal	...	22
16 B 359	...	Queen-Empress v. Shava	...	10, 31
16 B 661 (665)	...	——————— v Mona Puna	...	13, 14, 15, 16
18 B 468 (473)	...	Rozario v. Ingles	...	13
22 B 281 (283)	...	Abaji v. Bala	...	23
23 B 213	...	Empress v. Durant	...	13, 15
		I. L. R. Calcutta Series.		
5 C 536	...	Tokee Bibee, *In the matter of* v. Abdool Khan	...	13
13 C 365	...	Alimuddin v. Queen-Empress	...	32
16 C 781	...	Nur Mahomed v. Bismulla Jan	...	13
23 C 493	...	Jhoja Singh v. Queen-Empress	...	13
27 C 229	...	Sheo Nath Saran v. Sukh Lal Singh	...	22
27 C 455	...	Hari Charan Singh v. Queen-Empress	...	12
27 C 656	...	Nakhi Lal Jha v. Queen-Empress	...	13

			PAGE
		I. L. R. Calcutta Series—(*Concluded*).	
27 C 662	...	Queen-Empress v. Iman Mondal ...	13
28 C 709	...	Lotit Mohan Moitra v. Surja Kanta Acharjee ...	13
30 C 36	...	Ezra v. The Secretary of State ...	20
30 C 605	...	Dibendra Narain Roy v. Ramtaran Banerjee ...	20
32 C 367 (372)	...	Hara Charan Mookerjee v. King-Emperor ...	20
33 C 386	...	Badiaddin Ahmed v. Nizamuddin Haidar ...	28
36 C 808	...	Rakhal Chandra Laha v. Emperor ...	12, 17
		I. L. R. Madras Series.	
2 M 356	...	Vasudeva Shanbog v. Naraina Pai ...	26
5 M 259 (265)	..	Keshava Tharagan v. Rudran Nambudri ...	27
12 M 451	...	Queen-Empress v. Subbayya ...	14
12 M 483	...	Chengal Reddi v. Venkata Reddi ...	22
12 M 503	...	Arunachallam v. Murugappa ...	22
15 M 138 (143)	...	Atchayya v. Gangayya ...	19
16 M 105 (112), 115		Queen-Empress v. Viraperumal ...	30, 31
16 M 421 (422)	..	——————— v. Alagu Kone ...	7, 11
22 M 234 (236), (237)		Thoyi Ammal v. Subbaroya Mudali ...	23, 25, 28
24 M 444 (447)	...	Ahmed v. Moidin ...	27
29 M 89	...	Suppa Tevan v. Emperor ...	7, 11
		Allahabad Law Journal.	
3 A L J 654	...	Chhiddu v. Kuar Sen ...	23
6 A L J 244	...	Chhedi Lal v. Jwala Prasad ...	27, 32
		Allahabad Weekly Notes.	
A W N (1885) 188	...	Khasi Ram v. Bhullu ...	26
11 A W N 143	...	Mahabir Prasad Misser v. Mahadeo Dat Misser ...	28
12 A W N 3	...	Muhammad Zahur v. Cheda Lal ...	26
A W N (1897) 23	...	Barkat, *In re* ...	14
A W N (1898) 154	...	Queen-Empress v. Prithi Pal Singh ...	7
A W N (1903) 36	...	Emperor v. Bidhyapathi ...	7
A W N (1906) 280	..	Chiddu v. Kunwar Sen ...	23
		Bombay High Court Reports.	
11 B H C R 11	...	Reg v. Jibhai Vaji ...	6
		Bombay Law Reporter.	
3 Bom L R 437	...	King-Emperor v. Annya ...	14
5 Bom L R 551	...	Emperor v. Kushayamaji Sutar ...	9, 10, 31
7 Bom L R 422 (P C)	...	Ezra v. The Secretary of State ...	20
8 Bom L R 19	...	Vithu Govinda v. Ramji Yelluji ...	26
		Ratanlal's Unreported Criminal Cases.	
Rat Unrep Cr Cas 461	...	Queen-Empress v. Liladhar ...	15, 16
		Calcutta Law Journal.	
1 C L J 161	...	Hur Churn Mukerji v. The King-Emperor ...	20
1 C L J 227	...	Ezra v. The Secretary of State for India in Council...	20
2 C L J 149	...	Hirananda Ojha v. Emperor ...	13
9 C L J 690	...	Rakhal Chandra Laha v. The King-Emperor ...	12, 17, 30

Calcutta Weekly Notes.

		PAGE
4 C W N 249	Huri Churn Singh v. The Empress	12
4 C W N 327	Sheo Nath Sarun v. Sukh Lall Singh	22
7 C W N 249	J.E.D. Ezra v. The Secretary of State for India	20
9 C W N 364	Har Charan Mukerjee v. The King-Emperor...	20
9 C W N 454	Ezra v. The Secretary of State for India in Council.	20
9 C W N 983	Hirananda Ojha v. The Emperor	13, 14
10 C W N 501	Syed Badiauddin Ahmed v. Nizamuddin Haider	28
10 C W N 962 (965).	Banu Singh v King-Emperor	15
11 C W N 51	Sheikh Fakir v. The Emperor	9
13 C W N 942	Emperor v. Rakhal Chandra Laha	12, 17

Calcutta Law Reports.

2 C L R 476	Issen Meah v. Kalaram Chunder Naw	29
5 C L R 458	Tokee Bibee, *In the matter of* v. Abdool Khan	13
10 C L R 553	Mohesh Chunder Kopali v. Mohesh Chunder Dass...	13, 15

Bengal Law Reports.

4 B L R 97 (**F.B.**)...	Maniram Deb v. Debi Charan Deb	26
13 B L R Ap 40	Sardhari Lal, *In the matter of the petition of*	19
14 B L R 54	Queen v. Mussamut Itwarya	31, 32
14 B L R 295 Note.	——— v. Ananto Chuckerbutty	30

Sutherland's Weekly Reporter.

W R 1864 Cr 15	The Queen v. Chota Jadub Chunder Biswas	12
7 W R 44 (Cr)	——— v. Behary Lall Bose	14, 15
13 W R 17 (Cr)	——— v. Hossein Sirdar	8
20 W R 19 (Cr)	——— v. Ramsodoy Chuckerbutty	31
21 W R 31 (Cr)	——— v. Tarinee Churn Bose	32
22 W R 1 (Cr)	——— v. Anunto Chuckerbutty	30
22 W R 10 (11) (Cr)	Sardhare Lal, *In re*	19
22 W R 14 (15) Cr...	The Queen v. Mussamat Itwarya	31
22 W R 387	Sreemut Ram Totadar v. Ram Kishen Sen	25
23 W R 12 (Cr)	The Queen v. Sewa Bhogta	31

Madras High Court Reports.

4 M H C R 185	A. Vedamuttu, *In re*	32

Madras Law Journal.

17 M L J 99	Anai Kutti Ayya Kannu Nadar v. Muthiah Nadar..	23, 26, 29
17 M L J 545	Majan v. Pathukutti	29

Madras Law Times.

1 M L T 63	Vithu Govinda v. Ramji Yelluji	26

Weir's Criminal Rulings.

1 Weir 175	Queen-Empress v. Alagu Kone	7, 11
1 Weir 176	Ramaswamy Chetty, *In re*	12, 14
1 Weir 822	H. C. Proceedings, 1st March, 1881, No. 398	18
1 Weir 823	Queen-Empress v. Viraperumal	31
1 Weir 831	Criminal Appeal, No. 704 of 1895	32

			PAGE
	Central Provinces Law Reports.		
7 C P L R 122 ...	Madhogir Gossai v. Gopal Bhaskar	...	25, 30
10 C P L R 16 (Cr) ...	Empress v. Banko Bihari	...	12
16 C P L R 112 (114).	Sitaram Amrit Brahman v. Dharmu	...	16
17 C P L R 127 ...	Mt. Parbati v. Chotey	...	13
	Nagpore Law Reports.		
4 N L R 81 ...	Sheik Chand v. Mahomed Hanif	...	13
	Oudh Cases.		
8 O C 11 ...	Ram Lal Sahu v. Saltanat Beg	...	27
10 O C 337 ...	Ram Samujh v. King-Emperor	...	10
	Punjab Record.		
17 P R 1875 (Cr) ...	Abdul Kadir v. The Crown	...	19
40 P R 1881 (Cr) ...	Empress v. Sulaiman Khan	...	19
21 P R 1886 (Cr) ...	Ahadju, *In the matter of*	...	20
36 P R 1886 (Cr) ...	Khushal Singh v. Empress	...	19
38 P R 1887 (Cr) ...	Mal Singh v. Empress	...	14
31 P R 1889 (Cr) ...	Budha v. Empress	...	5, 6, 8, 10, 30, 32
2 P R 1893 ...	Lalu v. Queen-Empress	...	12
15 P R 1900 (Cr) ...	Crown v. Ida	...	13
12 P R 1902 (Cr) ...	Nabi Baksh v The Emperor of India	...	15, 16
20 P R 1902 (Cr) ...	Bhaj Khan v. The Emperor	...	17
21 P R 1904 (Cr) ...	Sardar Khan v. The Emperor	...	16
9 P R 1906 (Cr) ...	Alla Dad v. The King-Emperor	...	16
89 P R 1909 ...	Puran Chand v. Chuhar	...	7, 21
	Punjab Law Reporter.		
52 P L R 1902 ...	Durga v. The Emperor	...	16
100 P L R 1902 ...	Nabi Baksh v. The Emperor of India	...	16
	Punjab Weekly Repoter.		
143 P W R 1909 ...	Bishan Das v. Massu	...	7, 21
	Upper Burma Rulings.		
U B R (1892-1896), Vol II, p 598 ...	Maung Pan Gaing v. Maung San Hla	...	21
U B R (1906), p 3...	Nga Po Yin v. King-Emperor	...	15
	Lower Burma Rulings.		
L B R (1872—92) 246, 248, 252 ...	Nga Po Aung, *In the matter of*	...	16
2 L B R 272 (277) (F.B.) ...	King-Emperor v. Pakiri	...	19
	Moore's Indian Appeals.		
10 M I A 340 ...	Alexander John Forbes v. Ameroonissa Begum	...	19
	Sind Law Reports.		
1 S L R 124 ...	Imperator v. Khan Mahomed	...	14

				PAGE
		Criminal Law Journal.		
2 Cr L J 110	...	Har Charan Mukerjee v. Emperor	...	20
3 Cr L J 370	...	Suppa Tevan v. Emperor	...	7, 11
4 Cr L J 145	..	Banu Singh v. Emperor	...	15
4 Cr L J 282	...	Alladad v. Emperor	...	16
4 Cr L J 412	...	Sheikh Fakir v. Emperor	..	9
7 Cr L J 89	...	Ram Samujh v. Emperor	...	10
10 Cr L J 150	...	Rakhal Chandra Laha v. Emperor	...	12, 17
		Indian Cases.		
2 Ind Cas 201	...	Chhedi Lal v. Jawala Prasad	...	27, 32
2 Ind Cas 697	...	Rakhal Chandra Laha v. Emperor	...	12, 17
3 Ind Cas 621	...	Puran Chand v. Chupar	...	7, 21
		English Cases.		
1 Lea 199	...	Braiser's case	...	9
L R 1 Scotch App. 117	...	Jenkins v. Robertson	...	27
Cr Rul 28 of 1889	...	Queen v. Liladhar	...	15
L R Q B 418	...	——— v. Price	...	19
2 B and B 285	...	Queen's case	...	6
2 C and K 246	...	R. v. Nicholas	...	11
1 Cowp 331	...	— v. Rudd	...	16
1 Lea 403	...	— v. White	...	6
1 East P C 453	...	Tinkler's case, *In re*	..	15

THE INDIAN OATHS ACT, 1873.

CONTENTS.

PREAMBLE.

I.—Preliminary.

SECTIONS.

1. Short title.
   Local extent.
2. [Repealed].
3. Saving of certain oaths and affirmations.

II.—Authority to administer Oaths and Affirmations.

4. Authority to administer oaths and affirmations.

III.—Persons by whom Oaths or Affirmations must be made.

5. Oaths or affirmations to be made by—
   witnesses :
   interpreters :
   jurors.
6. Affirmation by Natives or by persons objecting to oaths.

IV.—Forms of Oaths and Affirmations.

7. Forms of oaths and affirmations.
8. Power of Court to tender certain oaths.
9. Court may ask party or witness whether he will make oath proposed by opposite party.
10. Administration of oath if accepted.
11. Evidence conclusive as against person offering to be bound.
12. Procedure in case of refusal to make oath.

V.—Miscellaneous.

13. Proceedings and evidence not invalidated by omission of oath or irregularity.
14. Persons giving evidence bound to state the truth.
15. Amendment of Penal Code, sections 178 and 181.
16. Official oaths abolished.
    Schedule [Repealed].

THE INDIAN OATHS ACT, 1873.

ACT NO. X OF 1873.

[*8th April, 1873.*]

An Act to consolidate the law relating to Judicial Oaths, and for other purposes.

Preamble.

Whereas it is expedient to consolidate the law relating to judicial oaths, affirmations and declarations, and to repeal the law relating to official oaths, affirmations and declarations; It is hereby enacted as follows:—

I.—Preliminary.

Short title.

1. This Act may be called The Indian Oaths Act, 1873.

Local extent.

It extends to the whole of British India, and, so far as regards subjects of Her Majesty, to the territories of Native Princes and States in alliance with Her Majesty;

[*Commencement.*] *Rep. by the Repealing Act, 1876 (XII 1876).*

(Notes).

General.

(1) **Object of the Act.**

The object of the Act aims at security of justice and guarantees as to the liberty of the subject. 10 A. 207. **A**

(2) **History of judicial oaths.**

The whole history of the Indian Legislature as to judicial oaths is a history of gradual emancipation of witnesses from the necessity of taking an oath and of the admissibility of affirmations in lieu of oaths. *Per Plowden,* J. 31 P.R. 1889 (Cr.). See 10 A. 207. **B**

2. [*Repeal of enactments.*] *Rep. by the Repealing Act, 1873 (XII of 1873).*

Saving of certain oaths and affirmations.

3. Nothing herein contained applies to proceedings before Courts Martial, or to oaths, affirmations or declarations prescribed by any law which, under the provisions of the Indian Councils Act, 1861, the Governor General in Council has not power to repeal. 24 & 25 Vict. c. 67

II.—Authority to administer Oaths[1] *and Affirmations.*

Authority to administer oaths and affirmations.

4. The following Courts and persons are authorized[2] to administer, by themselves or by an officer empowered by them[3] in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law :—

(*a*) all Courts[4] and persons having by law or consent of parties authority to receive evidence[5];

(*b*) the Commanding Officer of any military station occupied by troops in the service of Her Majesty :

Provided—

(1) that the oath or affirmation be administered within the limits of the station, and,

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in British India.

1.—"Oaths."

Definition.

(*a*) "Oath is a religious asseveration by which a person renounces the mercy and imprecates the vengeance of Heaven if he does not speak the truth." (R *v.* White, 1 Lea. 403; Queen's case 2 B. & B. 285). Taylor on Evidence, 8th Ed. p. 1175. *Cited* in 10 A. 207 (213). **C**

(*b*) "By the term oath, taken in its largest sense, is universally understood a ceremony composed of words and gestures, by which the Almighty is engaged eventually to inflict on the taker of the oath, or swearer as he is called, punishment in quantity and quality, liquidated, or more commonly unliquidated, in the event of his doing something which he, the swearer, at the same time and thereby engages not to do or omitting to do something which he in like manner engages to do. Correlative to the term oath is the term perjury, and it conjugates to perjure oneself, perjured perjurious; among which perjury is understood as designation of the conduct, whether positive or negative, which stands in opposition to the conduct engaged for, as above." Bentham's Jurisprudence, Vol. 5, p. 191. See General Clauses Act (X of 1897) S. 3 (36). **D**

2.—"Authorised."

Section enables, not requires administration of oath.

This section authorises, but does not require, a Court to administer an oath or affirmation. 31 P.R. 1889. **E**

3.—"Administer.... them."

(1) **Magistrate holding non-judicial proceeding.**

It is not competent for the Magistrate conducting a non-judicial proceeding the object of which is to discover and bring to punishment the writer a scandalous petition against him, to administer an oath. 11 B.H. C.R. 11. **F**

(2) **Oath in a non-judicial proceeding, effect.**

Where an oath was administered in a non-judicial proceeding, a conviction for giving false evidence was held not sustainable. (*Ibid*). **F1**

4.—"Courts."

(1) Scope.

The term "Court" includes all Magistrates (S. 3 of the Indian Evidence Act). 16 M. 421 (422). **G**

(2) Magistrate acting under S. 164, Cr.P.C., a Court.

A Magistrate acting under Ch. XIV of the Crim. Pro. Code is a Court acting in the discharge of a duty imposed on him by law and is therefore authorised to administer oath under this section. 29 M. 89=3 Cr. L.J. 370; 16 M. 421=1 Weir 175, But see 11 B. 702. **H**

(3) Magistrate inquiring under S. 122, Cr. P.C., a Court.

A Magistrate in inquiring under the provisions of S. 122, Cr.P.C., into the fitness of a surety tendered in obedience to an order under Ch. VIII of the said Code has power to record evidence upon oath or solemn affirmation. 26 A. 371. See also A.W.N. 1898, 154; A.W.N. 1903, 36. **I**

(4) Magistrate holding preliminary inquiry, not a Court.

"A Magistrate holding a preliminary inquiry under S. 164 Cr. P.C., in a Police investigation does not exercise the functions of a Court." Field Ev. 6th Ed. p. 59, *citing* 11 B. 702. **J**

(5) Local Commissioner.

A person who has been appointed a Local Commissioner for the purpose of recording evidence in a case, is not a Court and is not competent to administer an oath to one of the parties in the circumstances referred to in Ss. 8, 9, and 10 of the Act. 89 P.R. 1909=143 P.W.R. 1909=3 Ind. Cas. 621. **K**

5.—"Persons.....evidence."

Arbitrators.

(*a*) The arbitrators are persons authorised by law to take evidence and for that purposes to put witnesses upon oath or affirmation according to the provisions of law for the examination of witnesses. *Per Pearson, J.*, 1 A, 535. **L**

(*b*) The Act does not take away from arbitrators any power as to taking evidence or otherwise which they have previously possessed. *Per Stuart, C.J.*, 2 A.W.N. 34 (35)=4 A. 283. **M**

III.—Persons by whom Oaths or Affirmations must be made.

Oaths or affirmations to be made by—

5. Oaths or [1] affirmations [2] shall be made by the following persons :—

witnesses ;

(*a*) all witnesses [3], that is to stay, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence [4] ;

interpreters [5].

(*b*) interpreters of questions put to, and evidence given by, witnesses ; and

jurors.

(*c*) jurors.

Nothing herein contained shall render it lawful to administer, in a criminal proceeding [6], an oath or affirmation to the accused person [7], or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

(Notes).

1.—"Or."

Either oath or affirmation but not both.

A witness may either be examined on oath or on solemn affirmation, as the case may be, according to religious persuasion, but he cannot be both sworn and put on solemn affirmation at the same time. 13 W. R. 17 (Cr.). **N**

2.—"Affirmations."

(1) **Nature of affirmation.**

Ss. 4, 5, 6, 7, 14, and 15 do not mention solemn affirmation but affirmation *simpliciter* only. Ss. 8 to 12 deal with solemn affirmation as the voluntary act of a witness. *Per Plowden*, J., 31 P.R. 1889 (Cr.). **O**

(2) **Difference between a simple affirmation and a solemn affirmation or oath.**

The—consists in the omission from the former expressions involving the Deity or imputing belief in a Deity, which are present in the latter. *Per Plowden*, J. 31 P. R. 1889 (Cr.), **P**

3—"All witnesses."

(1) **Who may testify.**

"All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind." Indian Evidence Act, S. 118. **Q**

(2) **Competency of persons, what determines.**

(*a*) In determining the question of competency, the Court has not to enter into inquiries as to the witness's religious belief, or has to his knowledge of the consequences of falsehood in this world or the next. 11 A. 183 (185). **R**

(*b*) The Court has only to ascertain, in the best way it can, whether, from the extent of his intellectual capacity and understanding, he is able to give a rational account of what he has seen or heard or done on a particular occasion. If a person of tender years or very advanced age can satisfy these requirements, his competency as a witness is well established. 11 A. 183 (185). **S**

(3) **Competency of a witness of tender years—English and Indian Law.**

(*a*) The tender of age of a person would not render such person incompetent to appear as a witness to give testimony. The effect of the law in this country seems to be the same as the rule of the English Law on this particular point. 10 A. at pp. 209 (210). **T**

3.—"All witnesses"—(Continued).

(*b*) The rule of the English Law is:—"With respect to children, no precise age is fixed by law within which they are absolutely excluded from giving evidence, on the presumption that they have not sufficient understanding. Neither can any precise rule be laid down respecting the degree of intelligence and knowledge which will render a child a competent witness. In all questions of this kind, much must necessarily depend upon the good sense and discretion of the Judge." Tay Ev. *cited* in 10 A. 207 (210). **U**

(*c*) In deciding as to the competency of an infant to give evidence, the Judge will do well in remembering the wise rule promulgated by the Indian Evidence Act, 1855, that children under seven years of age, who appear incapable of receiving just impressions of the facts to be deposed to or of relating them truly, ought not to be examined. Per Mahmood, J. 10 A. 207 (210). **V**

(*d*) In one case the lower Court refrained from examining a small boy on the ground that he was of tender years. It appeared that under the circumstances of the case, that boy should have been an eye witness to the offence. Held that, the Court "considering the importance of the witness ought not to have refrained from examining him, unless, the Judge considered that the boy was prevented from understanding the questions put to him or from giving rational answers to those questions, by reason of tender years." 23 A. 90 (92). **W**

(4) **At what ages infants may be examined.**

In practice, it is not usual to receive the testimony of children of eight or nine years of age, when they appear to possess sufficient understanding. 10 A. 207 (210). **X**

Examples.

(i) In an indictment for assulting, with intent to rape, an infant who was certainly under seven years of age, and perhaps only five, all the Judges held that she might have been examined upon oath, if on strict examination by the Court, she had been found to comprehend the danger and impiety of falsehood. Braiser's case, 1 Lea. 199 *cited* in 10 A. 210. **Y**

(ii) But in another case, the Court promptly rejected the dying declarations of a child of four years of age, observing "that however precocious her mind might have been, it was quite impossible that she was of sufficient understanding to render her declarations admissible." Pikes case 3 C and P. 598 *cited* in 10 A. 207 (210). **Z**

(5) **Competency to be tested before examination as to *res gestæ*.**

(*a*) Before a child of tender years is asked any questions bearing on the *res gestæ*, the Court should test his capacity to understand and give rational answers, and his capacity to understand the difference between truth and falsehood. 11 C.W.N. 51=4 Cr. L.J. 412. **A**

(*b*) In the case of a child witness, the Judge is bound first to ascertain by questioning the child whether the child is by tender years prevented from understanding the questions put or from giving rational answer to those questions. Then if the Judge elects to take the statements of the child as evidence, he should proceed to administer the affirmation. 5 Bom. L.R. 551. **B**

3—"All witnesses"—(Continued).

Examples—(*Continued*).

(6) **Competency to testify a condition precedent to administration of oath.**

The Competency of a person to testify as a witness is a condition precedent to the administration to him of an oath or affirmation, and is a question distinct from that of his credibility when he has been sworn or has affirmed. 11 A. 183 (185). **C**

(7) **Competency to testify—Inability to understand oath.**

Where a person is competent to testify according to the provisions of S. 118 of the Evidence Act 1872, but is unable, owing to his tender age, to comprehend the nature of an oath or affirmation, section 13 *infra* relieves the Court of the necessity of administering an oath or affirmation to him; and the evidence of such a person recorded without oath or affirmation may be admitted. 10 O.C. 337 = 7 Cr. L.J. 89. **D**

(8) **Inability to understand oath and intellectual incapacity relation.**

(*a*) The ignorance of a child on such a matter as the nature of a solemn affirmation is not necessarily equivalent to an inability to understand ordinary questions and give rational answers. 5 Bom.L.R. 551; see also 16 B. 359. **E**

(*b*) But in 10 A. 207, Mahmood, J. held that an inability from tender years to comprehend either the spiritual or legal obligations of an oath or solemn affirmation is tantamount to intellectual incapacity, and makes the child incompetent to be examined as a witness at all. 10 A. 207. **F**

(9) **Religious belief, whether necessary for the administration of oath.**

(*a*) INDIAN LAW.

(i) The Evidence Act (section 118) in defining the competency of persons to testify, does not make it a condition of such competency that the person testifying should have any religious belief or should have attained an age at which he might be supposed capable of understanding religious matters. Nor does this Act show that the Legislature intended either the presence of a religious belief in any degree as a necessary condition of the competency of a person to testify, or of the admissibility of his evidence, or make any distinction between children who are competent to testify according to S. 118 of the Evidence Act and adult persons similarly competent. Per Plowden J. 31 P.R. 1889. (Cr.). **G**

(ii) A child examined as a witness must be examined on oath or affirmation whether he understands the nature of an oath or not. Oudh S.C, 242. **H**

(iii) Having regard to the language of the Act, neither a Judge nor a Magistrate has any option when once he has elected to take the statements of a person as evidence but to administer either the oath or affirmation to such person as the case may require. 11 A. 183 (185). **I**

(iv) The law does not dispense with oath or solemn affirmation in the case of witnesses who, by reason of tender age and want of instruction, are totally incompetent either to comprehend the spiritual obligations of an oath or the temporal punishment awarded by the law in the cases of perjury. 10 A. 207. **J**

3—"*All witnesses*"—(*Concluded*).

Examples—(*Concluded*).

(v) In a trial for murder before the Court of Sessions, a boy of twelve years of age was one of the witnesses and in answer to questions put by the Sessions Judge he said that he worshipped Debi and understood the difference between truth and falsehood and did not know the consequences here or hereafter of telling lies, but he would tell the truth. Though the Judge intentionally omitted either to swear or affirm the child, he proceeded to take a statement from him as a witness. *Held* that there is nothing in the law to sanction this procedure on the part of the Sessions Judge. 11 A 183. **K**

(*b*) ENGLISH LAW.

(i) A child, whose intellect appears to be in other respects sufficient to enable it to give useful evidence, may, from defect of religious instruction, be wholly unable to give any account of the nature of an oath or of the consequences of falsehood. 1 Phill Evi. 9, 10th Ed., *cited* in 10 A. at p. 211. **L**

(ii) In a recent case of trial for murder, where it appeared that a girl, eight years old, up to the time of the deceased's death, was totally ignorant of religion, but subsequently she had received some instruction as to the nature and obligation of an oath, but at the trial seemed to have no real understanding on the subject of religion or a future state, *Patterson, J.*, would not allow her to be sworn, observing: "I must be satisfied that this child feels the binding obligation of an oath from the general course of her religious education. The effect of the oath upon the conscience of the child should arise from religious feelings of a permanent nature, and not merely from instructions confined to the nature of an oath recently communicated to her for the purpose of this trial; and as it appears that, previous to the happening of the circumstances to which this witness comes to speak, she had had no religious education whatever and had never heard of a future state, and now has no real understanding on the subject. I think that I must reject her testimony." *R. v. Williams*, *cited* in 10 A. at p. 212. **M**

(iii) But in R. *v.* Nicholas, 2 C. & K. 246, Pollock, C.B. preferred to put off the trial in order that a child of six years old might receive instruction, but said that he thought there were cases in which such an application might be entertained, and that the Judge should act according to his discretion. See 10 A. at p. 212. **N**

4.—"*Authority....evidence.*"

(1) **Person making statement under S. 164, Cr.P.C.**

(*a*) A person making a statement under S. 164, Cr.P.C., is a witness within the meaning of this section and therefore one to whom an oath or affirmation might be administered. 16 M. 421=1 Weir 175. **O**

(*b*) Therefore a person is liable to be punished under S. 193, I.P.C., for making a false statement on oath before a Magistrate when he is recording statement under S. 164 Cr. P.C. 1 Weir 175=16 M. 421; 29 M. 89=3 Cr. L.J. 370. **P**

4.—"Authority....evidence"—(Concluded).

(c) But in 2 P.R. 1893 (Cr.), it was held that a Magistrate has no power to administer oath or affirmation under the Act to any person whose statement he records under S. 164 Cr. P.C., his function being to prepare a record in the manner and subject to the conditions prescribed in that section. Q

(2) **Confession on oath under S. 164, Cr. P.C., not admissible.**

A confession taken under the provisions of S. 164, Cr. P.C., but on oath in violation of the provisions of this section, is not a confession in accordance with law and therefore the record of confession is not admissible under S. 80 of the Evidence Act. 10 C.P.L.R. 16 (Cr.). R

Consequently, any charge for giving false evidence founded on such statement is bad. 27 C. 455=4 C.W.N. 249. R1

(3) **Magistrate examining a person to start a case.**

Although a Magistrate might examine a person for the sake of obtaining information upon which a case might be started against some person not before the Court, he cannot examine him on oath, as such person is not a witness. There is no authority that, being so examined, such person is bound, by any express provision of law, to state the truth. S

(4) **Evidence given *coram non judice.***

Where a plaintiff in a suit before a District Munsiff came before the Judge and complained by petition that the Munsiff had improperly refused to examine his witnesses and dismissed his suit, although informed that the witnesses were in attendance and the Judge thereupon examined the petitioner upon solemn affirmation and finding the charge unproved, ordered proceedings to be taken against him for giving false evidence, *held*, that the Judge had no authority to examine the petitioner upon oath in such a case and that the oath having been made and the evidence given *coram non judice* could not form the subject of a prosecution under S. 193, I.P.C. 1864 W.R. Cr. 15. T

5.—"Interpreters."

Omission to administer oath, effect.

(a) The effect of the omission to administer an oath to the interpreter under this section is to render it necessary for the prosecution to prove that the interpretation was made accurately. 9 C.L.J. 690=13 C.W.N. 942=10 Cr. L.J. 150=36 C. 808=2 Ind. Cas. 697. U

(b) The omission to administer an oath to the interpreter does not make the deposition inadmissible. 9 C.L.J. 690. V

6.—"Criminal proceeding."

(1) **Application for transfer under S. 526, Cr. P.C.**

An application by the accused as such under S. 526, Cr. P.C., made to the High Court, for the transfer of his case from one Magistrate to another Magistrate is a criminal proceeding within the meaning of this section. 1 Weir. 176. W

6.—"*Criminal proceeding*"—(*Concluded*).

(2) **Administration of oath *in quasi*—Civil poceedings.**

(*a*) PROCEEDINGS UNDER S. 133, CR. P.C.

Proceedings under S. 133 of the Cr. P.C., are more of the nature of Civil than of Criminal Proceedings and a party to such a proceeding is not an accused person within the meaning of S. 369 Cr. P.C., and there is nothing to prevent his being examined on oath, and if such a person gives false evidence he may be prosecuted for an offence under S. 193 I.P.C. 2 C.L.J. 149=9 C.W.N. 983. **X**

(*b*) PROCEEDINGS UNDER S. 488, CR. P.C.

Bastardy proceedings under S. 488, Cr. P.C., are in the nature of Civil Proceedings and the defendant therein may give evidence on his own behalf. 16 C. 781. See also 18 B. 468 (473); 17 C.P.L.R. 127; 5 C. 536=5 C.L.R. 458. **Y**

7.—"*Accused person.*"

(1) **Meaning of "accused person."**

(*a*) The term 'accused person' means a person over whom a Magistrate or other Court is exercising jurisdiction. 16 B. 661; *followed in* 21 A. 107; see also 23 C. 493, 28 C. 709. **Z**

(*b*) The term accused means the accused under trial and under examination by the Court. It cannot include an accused over whom the Court is exercising jurisdiction in another trial. 23 B 213 (223). See also 20 A. 426. **A**

(*c*) But in 2 C.L.J. 149=9 C.W.N. 983, it was held that the word accused does not necessarily mean and include every person over whom a Magistrate or other Court is exercising jurisdiction. **B**

(2) **Who are accused persons.**

(*a*) So, a person against whom proceedings are taken under Ch. VIII of the Cr. P.C., is an accused person. 21 A. 107, see also 25 A. 375, 15 P. R. 1900 (Cr.). **C**

(*b*) Hence a person who is called upon to furnish security for good behaviour is an accused person. 23 C. 493. **D**

(*c*) So also is a person called upon to furnish security for keeping the peace under S. 107 Cr. P. Code. 4 C.L.R. 652. **E**

(*d*) The term "accused" applies to a person who is liable to imprisonment under S. 123, Cr.P.C., in default of giving security. 27 C. 656. **F**

(*e*) In 27 C. 662, it has been held that the term "accused person" cannot be applied to a person proceeded against under S. 110, Cr.P.C. **G**

(3) **Who are not accused persons.**

(*a*) A person who has never been arrested, and against whom no process has issued, is not accused person, even though he is a principal offender. 1 East. P.C. 354. **H**

(*b*) A person complained against does not become an accused person until it has been decided to issue a process against him. 4 N.L.R. 81; see also 10 C.L.R. 553. **I**

(*c*) So where a complaint was made to a Magistrate against A and B and process issued against A only, B was held to be a competent witness on his behalf. 10 C.L.R. 553. **J**

7.—" Accused person "—(Continued).

(*d*) Even though where a person is arrested, so long as he is not brought before a Magistrate or Court, he is not an accused person. 16 B. 661.K

(*e*) Thus, a person who has been arrested by the police as concerned in a crime, but who, owing to certain disclosures made concerning his accomplices in the crime, has been discharged by the police without being brought before a Magistrate is not an accused person though the discharge by the police was illegal. 16 B. 661. L

(*f*) A person who has been suspected and charged with an offence, but discharged by the Magistrate for want of evidence, may afterwards be admitted as a witness for the prosecution. 7 W.R. 44 (Cr.). M

(*g*) An informer is not an accused person and there is no obstacle to the administration of an oath or affirmation to him. 38 P. R. 1887. (Cr.). N

(*h*) person against whom proceedings are taken under S. 133 Cr. P. C. has been held not an accused person, such proceedings being more of a Civil than of a Criminal nature. 9 C.W.N. 983. O

(4) **Oath or affirmation not to be administered to accused.**

Under this section, it is unlawful to administer an oath or affirmation to an accused person in connection with criminal proceedings. 1 Weir 176. P

(5) **Accused convicted but not sentenced.**

Where two of nine persons charged and tried for dacoity, pleaded guilty and were convicted but sentence was not passed upon them, *held*, by Candy J. that they were no longer accused persons and were competent witnesses, though the fact that they were not sentenced would affect the value of their evidence. 3 Bom. L.R. 437. Q

But Fulton J. held that the trial of these accused did not end with their conviction and before sentence was passed, and no oath could be administered for them nor could they be examined as witnesses. (*Ibid*).

(6) **Accused in appeal and revision.**

(*a*) A Criminal appeal is a continuation of a criminal case, and except so far as there is a provision to the contrary, the appellant has privilege of the accused and cannot be punished for making a false statement. 12 M. 451, *followed* in 19 A. 200. R

(*b*) Every reason which could render it not desirable for a petitioner in appeal to be a competent and compellable witness applies with equal force in revisional proceedings. 1897 A.W.N. 23. S

(*c*) The accused in a case on the file of a Magistrate applied as such accused to the High Court under S. 526, Cr.P.C. to transfer the case to another Magistrate and a false affidavit was sworn to by him before the Deputy Registrar of the High Court in support of his application. *Held* that the affidavit was a nullity and that the accused was not guilty under Ss. 193 or 199. 1 Weir 176. T

(*d*) But in 1 S.L.R. 124, it was held that, in such cases, though the accused could not be prosecuted for giving false evidence, he could be punished under the first part of S. 182, I.P.C. U

7.—"Accused person"—(Continued).

(7) **Accomplice, when competent witness.**

(*a*) ACCOMPLICE NOT AN ACCUSED UNDER TRIAL.

(i) An accomplice, if he is not accused under trial in the same case, is a competent witness, and may, as other witnesses, be examined on oath. If he is not sent up for trial, or if he is tried separately, or if he is convicted, he may give evidence on oath. Even if he is indicted with others, the Local Government or the Public Prosecutor acting on instructions from the Local Government with the consent of the Court, withdraw the prosecution, obtain an order of discharge, and tender him as a witness to be examined on oath. 10 C.W.N. 962 (965) =4 Cr. L.J. 145. See also U.B.R. (1906), p. 3. **V**

(ii) Thus, if several persons charged with an offence are tried separately, the section would not prevent one of the offenders from being examined as a witness for or against his accomplice who is tried separately. 23 B. 213. See also 20 A. 426 ; Roscoe's Criminal Evidence, 4th Ed. p. 122. Archbold's Criminal Pleadings (20th Ed.), p. 318. **W**

(iii) So, where D, a European British subject jointly charged with certain Native subjects with the offence of conspiring to commit extortion, claimed to be tried by a mixed jury under S. 450, Cr.P.C., and the Natives claimed to be tried separately under S. 452, Cr.P.C., *held* that in the case in which D was tried separately, the Native subjects could be examined as witnesses on oath. 23 B. 213. **X**

(iv) Similarly where A and B are tried separately, the one for a substantial offence and the other as an abettor, each is competent to give evidence at the trial of the other 20 A. 426. **Y**

(*b*) PERSON ARRESTED BY POLICE AS AN ACCOMPLICE.

A —and sent up for trial, is an accused person, and could not be examined as a witness, unless he is discharged or acquitted. 12 P.R. 1902, (Cr.), **Z**

(*c*) ARRESTED PERSON DISCHARGED BY POLICE.

Where a person arrested by the police, was not brought before the Magistrate, but was discharged by the police, although illegally, it was held that his evidence was admissible. 16 B. 661. **A**

(*d*) PERSON WHO IS NOT ARRESTED.

(i) A person never arrested, and against whom no process has been issued, is a competent witness, even if he be a principal offender. Tinkler's case, 1 East P.C. 453, *cited* in 16 B. 661 (665). **B**

(ii) So, where a complaint was made to a Magistrate against A and B and process issued against A only, B was held a competent witness on his behalf. 10 C.L.R 553. **C**

(*e*) CHARGE ILLEGALLY WITHDRAWN.

The above rules hold good also to the case of an accused person, against whom the Magistrate illegally allowed the charge to be withdrawn. His subsequent evidence as a witness would be inadmissible. *Q* v. *Liladhar*, Cr. Rul. 28 of 1889. *cited* in 16 B. app. 666; Rat.Unrep Cr. Cas. 461. **D**

(*f*) PERSON WHO HAS BEEN SUSPECTED OR CHARGED WITH AN OFFENCE.

There is no law or principle which prevents a—, but discharged by the Magistrate for want of evidence, being afterwards admitted as a witness for the prosecution. 7 W. R. 44, Cr. *R*. **E**

7.—"Accused person"—(Concluded).

(*g*) ILLEGAL TENDER OF PARDON:

(i) It is illegal for a Magistrate to convert an accused pereson into a witness, except when a pardon has been lawfully granted under S. 347 Cr.P.C. 1 B. 610 (618); see also 52 P.L.R. 1902; 16 C.P.L.R. 112 (114); 100 P.L.R. 1902. F

(ii) The evidence of an accused person not legally pardoned is not admissible. Rat. Unrep. Crl. Cas. 461. G

(iii) But the tender of an illegal pardon to an accused person would not render him a competent witness against his accomplices, unless and until he is acquitted, discharged or convicted. 1 B. 610 (618). See also 2 A. 260; 10 B. 190. H

(iv) Thus an accused person to whom a Magistrate grants pardon in a case not contemplated by S. 337, Cr.P.C. cannot be examined as a witness against his accomplice. 10 B. 190, *following* 1 B. 610. I

(v) Thus where the Magistrate had issued a warrant against two persons for theft and they were brought before him, and the Magistrate tendered them a pardon, such tender being illegal, and took their evidence as witnesses, and they gave evidence also at the Sessions trial, it was held that being accused persons, and not having been legally pardoned, they could not be examined as witnesses, until they had been acquitted or discharged or convicted. Their evidence was therefore rejected as absolutely inadmissible. 1 B. at p. 618 *cited* in 16 B. at p. 665. J

(vi) Similarly, a pardon granted to one of several accused persons by the Local Government after the commencement of the trial is illegal and cannot alter his position and make him cease to be an accused person. No oath can be administered to him, and he cannot be examined as a witness who were jointly tried and being tried with him. 9 P.R. 1906 (Cr.)=4 Cr.L.J. 282. See also 12 P.R. 1902 (Cr.) K

(vii) But where pardon had been tendered before the commencement of trial, and while the case was still under the police investigation, held the person pardoned could be examined as a witness ae the trial. 21 P.R. 1904 (Cr.). See also 16 B. 661. L

(viii) Although the Courts have exculuded evidence got on illegal pardons, such as those tendered by the police, yet the evidence of an accomplice, who was tendered pardon by the District Superintendent of Police, under the orders of the District Magistrate, was admitted. L.B.R. (1872—1892), 246, 248, 252. M

(ix) This the evidence given by an accused person, who had received a pardon in the case of an offence not exclusively triable by the Court of Sessions, was held not relevant, that person not having been acquitted or discharged or convicted. (*Ibid*). See also *R* v. *Rudd* 1 Cowp. 331, *cited* in 1 B. at p. 618. N

(x) The deposition of an accused person, to whom pardon has been tendered for an offence not exclusively triable by the Court of Sessions or High Court, cannot be considered against other persons accused of such offences. 52 P.L.R. 1902. O

(xi) Tender of pardon to a person concerned along with others in an offence not exclusively triable by a Court of Sessions, and his examination as a witness, are both illegal; and his statement would be irrelevant and inadmissible. 2 A. 260. P

Affirmation by Natives or by persons objecting to oaths.

6. Where the witness, interpreter or juror is a Hindu or Muhammadan,

or has an objection to making an oath,

he shall, instead of making an oath, make an affirmation.

In every other case the witness [1], interpreter [2] or juror shall make an oath [3].

(Notes).

1.—"Witness."

What persons are competent to testify.

See notes under S. 5 *supra*. **Q**

2.—"Interpreters."

Omission to administer oath.

As to the effect of not administering oath to interpreters, see 9 C.L.J. 690=13 C.W.N. 942=10 Cr.L.J. 150=2 Ind. Cas. 697=36 C. 808 noted under S. 5, *supra*. **R**

3.—"Shall make an oath."

(1) **Section is imperative.**

(i) This section imperatively requires that no person shall testify as a witness, except upon oath or affimation. 10 A. 207. **S**

(ii) But in 31 P.R. 1889, it was held by Plowden J. that the true effect of S. 13, *infra*, is to show that the provisions of S. 5 and this section are voluntary and not imperative. **T**

(2) **Repetition of *Kalma*.**

The conviction of Mahomedan witness under S. 178 I.P.C. for not respeating the *kalma* is illegal, as this section expressly exempts witnesses, interpreters and jurors who are Hindus or Muhammadans from making an oath, and as the repetition of the *kalma* is not in accordance with the form prescribed by the Chief Court (Punjab) under the authority of S. 7 *infra*. 20 P.R. 1902 (Cr.). **U**

IV.—Forms of Oaths and Affirmations (1).

Forms of oaths and affirmations.

7. All oaths and affirmations made under section 5 shall be administered according to such forms as the High Court may from time to time prescribe.

And until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.

1.—Forms.... affirmations."

Forms of oath and affirmations.

For—, prescribed in

(*a*) Madras. See Madras Local Rules and orders, Ed. 1903, Vol. I, p. 15; see, also, the Civil Court's Guide, pp. 144—146. **V**

(*b*) Bombay. See Bombay Local Rules and orders, Ed. 1896, Vol. I, p. XXXII.

(*c*) Central Provinces. See Central Provinces, List of Local Rules and Orders Ed. 1896, p. 18. **W**

(*d*) Burma. See Burma Laws List Ed. 1897, p. 47. **X**

(*e*) United Provinces. See N.W.P. and Oudh Local Rules and Orders, Ed. 1894, p. 24. **Y**

Power of Court to tender certain oaths.

8. If any party to, or witness in [1], in any judicial proceedings [2] offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs [3], and not repugnant to justice or decency and not purporting to affect any third person, [4] the Court [5] may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

(Notes).

General.

Section not applicable to criminal proceedings.

(*a*) The provisions of sections 8 to 11 are inapplicable to criminal proceedings. They are appropriate only to proceedings in which the matters litigated are civil rights which the parties are at liberty to forego and of which the Courts are competent to enforce a renunciation. 1 Weir 822 ; 13 B. 391. **Z**

(*b*) Thus, where the accused who were charged with an offence under S. 147 I.P.C., had agreed that, if the complainant extinguished a lamp of ghee lighted by them in a certain pagoda alleging at the same time that they had committed the offence charged, they would be bound by the oath and take the consequences and the complainant accordingly took the oath and Magistrate being of opinion that under S. 11 this oath was conclusive proof against the accused convicted and sentenced them. *held* that the conviction and sentence was illegal. 1 Weir 822. **A**

1.—"Paty to or witness in."

(1) **Section not applicable to person outside the case.**

Sections 8 to 12 have no application whatever to any person outside the case and who is neither a "witness" nor a "party" and who is merely called in, in the way of arbitration or reference to assist in its disposal by means of an award or other statement of the like nature. *Per Stuart, C.J.* 4 A. 302. **B**

(2) **Complainant or accused, not a party.**

(*a*) The expression "party to a judicial proceeding" in this section does not include either the complainant or the accused in a criminal case. 13 B. 389. **C**

(*b*) Thus in the course of a trial on a charge of assault, the pleaders for the prosecution and defence respectively agreed that if the principal witness would give his evidence on an oath specially binding on him—to wit, on the Gita—they would accept the evidence as conclusive proof of the matter stated. The witness took the agreed oath and then stated that there was no assault at all. The Magistrate refused to consider this evidence as conclusive in fact and found the accused guilty and fined him Rs. 25. *Held* that the Magistrate was not bound to decide the case on the evidence of the witness who swore the special oath. 13 B. 389. **D**

2.—"*Judicial Proceedings.*"

A. What are Judicial proceedings?

(1) **Formation of judgment is test.**

Where the Legislature has authorised the formation of a judgment, and the grant or the withholding of a certificate on that Judgment, the inquiry is a judicial inquiry. *Queen* v. *Price*, L. R. Q. B. 418. *referred to* in 15 M. 138 (143) and 12 B. 36 (481, 42). **E**

(2) **Inquiry of trial under the Crim. Pro. Code.**

An inquiry in which evidence is legally taken, is, for the purpose of the Code, included in the term " Judicial proceeding ". 12 B. 36 (41). **F**

(3) **Whether other inquiries are judicial proceedings.**

But other inquiries are not, therefore, judicial proceedings and the functionaries holding them, Judges or Courts. 12 B. 36 (41). **G**

For an instance of another inquiry being a judicial proceeding, see 1 A. 1 (13, 14 and 16), under heading B *infra*. **H**

(4) **A Sub-Registrar is a Public Officer, and his proceedings are judicial proceedings.**

By the Registration Act (old), S 82, within the meaning of S. 228 of the Penal Code. 22 W.R. (Cr.) 10 (11)=13 B.L.R, Ap. 40; see also 15 M. 138 (148). **I**

B.—What are not Judicial proceedings?

(1) **Administrative inquiry.**

An inquiry about matters of fact, where there is no discretion to be exercised and no judgment to be formed, but something is to be done in a certain event as a duty, is not a judicial but an administrative inquiry. *Queen* v. *Price*, L.R. 6 Q.B. 418, *referred to* in 15 M. 138 (143), and 12 B. 36 (41, 42). See also, 10 M.I.A. 340, under heading A. *supra*. **J**

(2) **Trial under Frontier Regulations.**

If an accused person is not tried according to the ordinary procedure, owing to the Frontier Regulations, the trial is not a "judicial proceeding" with which the Chief Court can interfere in revision. 17 P.R, 1875 (Cr.). **K**

(3) **Proceedings before Tahsildar—Resistance to arrest.**

Where, during the trial of a civil suit, a Tahsildar permitted the accused, who came to pay the revenue due by him to the Government, and demanded the immediate payment of the balance, and the accused insolently resisted an arrest ordered to be made by the Tahsildar, the Tahsildar was held not to be sitting then in a stage of a "judicial proceeding" to sustain a conviction under S. 228 of the Penal Code, and S. 480 Crim. Pro. Code. 40 P.R. 1881 (Cr.). See, also, 36 P.R. 1886 (Cr).**L**

(4) **Proceedings of Revenue Officer enquiring into matters not provided by the rules under the Burma Land and Revenue Act not judicial.**

The proceeedings of a Revenue Officer, to whom an application for a grant of land is made, and who enquires into matters not specified in Rule 3 or 46 of the Rules under the Burma Land and Revenue Act, are not proceedings held in the discharge or exercise of a duty or power, imposed or conferred by law and are, therefore, not judicial. 2 L.B. R. 272 (277) (**F.B.**). **M**

N.B.—(Similarly an inquiry into an objection to the issue of an order of eviction under Rule 52 of the above mentioned rules).

2.—"Judicial Proceedings"—(Concluded.)

B. What are not Judicial proceedings?—(*Concluded*).

(5) **Proceedings held by Magistrate in his executive capacity not judicial proceedings.**

Proceedings taken by a District Magistrate as such, on an application by a Foreign State for extradition of a subject of the State, not being authorized by law to be taken, are not "judicial proceedings" as the term "Officer presiding in the local British Court" in No. 3 of the Rules for the apprehension, etc., "of persons charged with heinous crimes", contained in the treaty with the Jummoo State, published in Chief Court's Book Circular No. XXXIV (*c*), must be presumed to merely describe the particular Executive Officer, who is to take the measure, prescribed in the rule in his executive capacity. 21 P.R. 1886 (Cr.). **N**

(6) **Proceedings after decree taken on report of Nazir.**

Where a Nazir was obstructed in the execution of a decree, and the Munsiff, on report, sent the obstructors, under S. 476 of the Crim. Pro. Code, to a Magistrate for trial under S. 186 of the Penal Code, it was held that the obstruction was not brought to the notice of the Munsiff in the course of a "judicial proceeding" as the judicial functions of the Munsiff determined when he finally decided the case. 32 C. 367 (372) = 9 C.W.N. 364 = 1 C.L.J. 161 = 2 Cr. L.J. 110. **O**

(7) **Policeman not a Judge.**

A Policeman, before he arrests a person, often has to make an inquiry, but is not, therefore, a Judge. 11 B. 659, *referred to* in 12 B. 36 (42). **P**

(8) **Proceedings of Magistrate under S. 88 of the Crim. Pro. Code, 1882.**

The——are not judicial proceedings under S. 4 (*d*) of that Code. 6 A. 487 (488). **Q**

(9) **Illegal order directing detention in custody.**

A Magistrate's illegal order directing two men, acquitted by a Court of Sessions, to be detained in custody, pending the appeal to the High Court, was held not to be a "judicial proceeding" within the terms of the definition in S. 4, Act X of 1872. 1 A. 1 (7) (**F.B.**) per Turner, C.J. and Pearson, J; *contra* by Spankie and Oldfield, JJ. who held it to be a judicial proceeding. See 1 A. 1 (13, 14, 16.). **R**

(10) **Magistrate not authorized to conduct preliminary inquiry.**

A statement taken, under S. 164 of the Crim. Pro. Code, by a third class Magistrate, not authorized to carry on the preliminary inquiry in the case, is not evidence in a stage of "judicial proceeding" within the meaning of Ss. 191 and 193 of the Penal Code. 11 B. 702, 704 (**F.B.**).

For instances of other inquiries not being judicial proceedings, see 12 B. 3 (41), under heading A, *supra*. **S**

(11) **Proceedings under the Land Acquisition Act.**

A Collector authorized by the Local Government, under S. 7 of the Act, is not a judicial officer nor the proceedings conducted before him judicial proceedings. 7 C.W.N. 249 = 30 C. 36. **T**

So, also, are proceedings conducted under S. 9 of the Act. 7 Bom. L.R. 422 (**P.C.**) = 9 C.W.N. 454 = 1 C.L.J. 227 = 30 C. 605 = 2 A.L.J. 771. **U**

3.—"In any form....belongs."

Form of oath to be a binding one.

(*a*) Where the peculiar nature of the oath and the effect which is attached to it are such that any statement made upon such an oath would not be lightly made, the evidence given is conclusive proof of the matters stated. 18 A. 46 (48). **V**

(*b*) Where the decision of a dispute depends upon the taking of an oath by one of the parties, it is a fair and reasonable presumption that the intention is that such oath should be taken in the most solemn and binding form in ordinary use. U.B.R. (1892-1896), Vol. II, p. 598. **W**

4.—"Not purporting....third person."

(1) **Oath affecting a third person.**

(*a*) Where the form of the proposed oath was such as was understood and purporting to affect a third person, such an oath under the Act is not an oath which could under any circumstances be lawfully administered. 18 A. 46 (48). **X**

(*b*) Where the plaintiff offered to abide by any statement which the defendant might make on oath to be taken in this form, namely, that holding the arm of his son he should state what he could say on the matters asked of him and the defendant consented, *held* that such an oath should never be administered. 18 A. 46. **Y**

5.—"Court."

(1) **Persons authorized to receive evidence, not a Court.**

As sections 8 to 12 draw a distinction between "Court" and persons authorized to take evidence, the term "Court" does not include persons authorized to take evidence. 89 P.R. 1909=143 P.W.R. 1909=3 Ind. Cas. 621. **Z**

(2) **Local Commissioner.**

Therefore a Local Commissioner authorized to record evidence is not competent to administer an oath to one of the parties under the circumstances mentioned in Ss. 8 to 10. 89 P.R. 1909=143 P.W.R. 1909=3 Ind. Cas. 621. **A**

Court may ask party or witness whether he will make oath proposed by opposite party.

9. If any party to any judicial proceeding offers [1] to be bound by any such oath or solemn affirmation as is mentioned in section 8, if such oath or affirmation is made by the other party to, or by any witness in, such proceeding [2], the Court [3] may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation:

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

(Notes).

1.—"If any party.... offers."

(1) **It is only party who can make offer.**

Under the Act no person but the party himself can make such an offer as is contemplated by this section. 14 B. 455. **B**

(2) **Reasons for the rule.**

(*a*) "The procedure laid down in this section is of a special kind. Its efficacy is presumably dependent on the circumstance that the true merits of a case are better known to the parties than to any one else. Its adoption is an appeal to the conscience of the party to whom the offer is made, and such an appeal can rightly be made by a person personally interested, whose confidence in the justice of his case is based on his own knowledge of its merits." 14 B. 455 (458). **C**

(*b*) " The right to make the offer cannot be properly transferred to another person whose interests are not at stake, and whose knowledge of the facts would ordinarily be derived from the instructions he might have received from the party. That must be the right construction to put upon the Act." 14 B. 455 (458). **D**

(3) **Whether agent or pleader can make offer.**

(*a*) WHERE THERE IS NO AUTHORIZATION.

(i) A pleader or an agent, holding a power of attorney authorizing him to act and appear for a party to a suit cannot bring the case to a close by offering to be bound by the oath of the opposite party given in a particular form. 14 B. 455 (457). **E**

(ii) Nor can the pleader engaged by the agent bind the party by offering to be bound by the oath, for his powers are no larger than those of the agent. 14 B. 455 (457). **F**

(*b*) WHERE THERE IS SPECIAL AUTHORIZATION.

But if a party specially authorizes his pleader, or an agent, to make an offer to be bound by a particular oath, he might be estopped from retracing the step he had taken if his offer were acted on. 14 B. 455 (458). **G**

(4) **Power of guardian *ad litem* to make offer.**

(*a*) It is competent for the guardian of a minor defendant to consent to the claim against the minor being settled by the oath of the plaintiff, and the previous sanction of the Court under S. 462, Civ. Pro. Code. is not necessary for the purpose. 12 M. 483 **H**

(*b*) The minor would be bound by such act of his guardian, unless it be proved to have been tainted with fraud or gross negligence savouring of fraud. 12 M. 483 ; see 12 M. 503. **I**

(*c*) In a suit on a bond against a minor the defence was payment and his guardian, on whom the *onus* lay, relying on S. 9 of the Act stated that if the plaintiff would take a particular form of oath and deny satisfaction he would abide by it. The plaintiff took the oath and denied payment and a decree was accordingly made. *Held* that the decree was binding on the minor. 27 C. 229=4 C.W.N. 327. **J**

1.—"If any party....offers"—(Concluded).

(5) **Sanction under S. 462, Civ. Pro. Code, not necessary.**

The consent by the guardian to be bound by the statement of the plaintiff cannot be regarded either as agreement or compromise within the meaning of S. 462, Civ. Pro. Code, and no leave of the Court, as required thereunder, was necessary prior to the guardian's entering into such defence and his consent to abide by its result, in the absence of a fraud and negligence, was binding on the minor. (*Ibid.*) **K**

(6) **Retraction by the party making the offer.**

(*a*) WHERE THERE ARE NO GROUNDS FOR RETRACTION.

(i) Where a party to a suit has made a reference to the oath of a witness, such as it is provided for by this section he should not be allowed arbitrarily to withdraw from the reference. A.W.N. (1906) 280=3 A. L.J. 654; 22 M. 234. **L**

(ii) Where, in a suit, the parties put in a joint application evidencing an agreement to abide by the statement on oath of a certain person, but one of the parties thereto, subsequently, asked leave to withdraw from the reference on the ground of the collusion of that person with the other party and no collusion was proved. *Held* that he could not be allowed to do so. 3 A.L.J. 654=A.W.N. (1906) 280=29 A. 49. **M**

(iii) The Act makes no exception of the case in which a party who makes such an offer which his adversary accepts subsequently retracts it. What it does is to make the administering of the oath or the appointment of a commissioner to administer it discretionary with the Court. 22 B. 281. **N**

(iv) When the proposal has been made by a party to a proceeding and the Court in pursuance of the proposal has asked the party required to take a particular form of oath whether he will do so, and the party so asked has agreed to take the oath, then, under such circumstances, no permission should be accorded to the party who made the proposal to withdraw from it, except upon the strongest possible grounds proved to the satisfaction of the Court to be genuine grounds for revoking the proposal. 18 A. 46; see, also, 17 M.L.J. 99. **O**

(v) The plaintiff offered under this section to be bound by the oath of the second defendant upon the point of his adoption, if she took it before a certain idol in a prescribed form. The second defendant agreed to take the oath before the idol in the prescribed manner, and subsequently did so in the presence of a commissioner appointed by the Court Held that the plaintiff could not retract his offer to be bound by the oath. 22 B. 281. **P**

(*b*) WHERE THERE ARE GOOD GROUNDS.

If a party after making such an offer satisfies the Court that he has good grounds for retracting it, the Court would probably exercise a wise discretion in refusing to administer the oath. 22 B. 281. **Q**

(*c*) WHERE THE REASONS ARE FRIVOLOUS.

But when the party puts forward frivolous reasons for his retraction, the Court is justified in administering the oath notwithstanding the retraction. 22 B. 281(283); 22 M. 234 (236). **R**

2.—"If such oath....proceeding".

Oath by a person outside the case.

Where the plaintiffs and some of the defendants in a suit agreed that the matters in difference between them in the suit should be decided in accordance with the statement made on oath by one J after he had made a local inquiry and the Court trying the suit accordingly made an order that J should be examined on a certain day and on that day, before the evidence of J was taken, the defendants made an application to the Court objecting to the case being decided in accordence with J's evidence and the Court disallowed the objection and decided the case in accordance with J's statement on oath—*Held*,

Per Stuart, C.J. that sections 8 to 12 have no application whatever to a party in the position of this reference. 4 A. 302.

Per Oldfield, J. Even if the reference be held to have been made under this Act, I am aware of no rule under which a submission to reference of this kind may not be revoked before the referee has given his evidence in pursuance of it. 4 A. 302. **S**

3.—"The Court".

Competency of arbitrator to act under the section.

This Act does not take away from arbitrator's power as to taking evidence or otherwise which they have previously possessed. *Per Stuart C.J.* A.W.N. (1882) 34 (35) = 4 A. 283. **T**

Administration of oath if accepted.

10. If such party or witness agrees to make such oath or affirmation, the Court [1] may proceed to administer it [2], or, if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission [3] to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed and return it to the Court.

(Notes).

1.—"The Court."

Competency of arbitrators to administer special oath.

(*a*) The arbitrators do not constitute a Court and are not competent to administer an oath of the nature mentioned in S. 8, *supra*. *Per Pearson*, J. 1 A. 535. **U**

(*b*) The statement of the defendant on an oath illegally administered by arbitrators could not form a valid basis of an award and the award is void. *Per Pearson*, J. 1 A. 535. **V**

(*c*) Thus, where the matters in dispute in a suit were, by the desire of parties thereto were referred to arbitration and during the investigation of these matters by the arbitrators the plaintiff offered to be bound by the oath of the defendant administered on the *koran* and the defendant agreed to take such oath and such oath was accordingly administered to him by the arbitrators and his evidence taken and an award made based on the evidence so taken, *held* that the evidence so taken could not form a valid basis of an award and the award was therefore void. 1 A. 535. **W & X**

1.—"The Court"—(Concluded).

(d) So also in a suit referred to arbitration, the plaintiff offered to be bound by what the defendant might swear in a special form. The defendant accepted the offer and took oath in the prescribed form. The arbitrator made an award in accordance with the evidence so given and the Court passed a decree in accordance with the award, disallowing the plaintiff's objection that the award was illegal. *Held.*

Per Oldfiled, J.—"The procedure adopted is that allowed by this Act; but it is by that Act confined to Courts of justice and not extended to arbitrators——there has been no award in this case and in consequence no final decree within the meaning of S. 522, C.P.C." Y

Per Stuart, C. J.—"The arbitrator, in disposing of the case as he did on the oath of the defendant, was fully justified in the course he adopted. This Act need not be imported into the case but even if it applied to and governed this case, what took place was quite consistent with a reasonable application of the provisions of the Act." A.W.N. (1882) 34=4 A. 283. Z

2.—"May proceed....it."

Discretion of Court to administer oath.

The Act only allowed the Court, in its discretion, to permit the taking of an oath in a form proposed by one party and accepted by the other. 22 M. 234. A

3.—"May issue a commission."

(1) **Power to issue commission.**

Under this section, the Court, if it does not administer the oath itself, must issue a commission to some person to administer it and authorise him to take the evidence of the person to be sworn and return it to the Court. 7 C.P.L.R. 122. B

(2) **Omission to issue a commission—Irregularity.**

The mere omission to issue a formal commission is a defect or irregularity such as is contemplated by S. 578, Civ. Pro. Code. 7 C.P.L.R. 122. C

(3) **No formal commission—Mere report.**

Where no formal commission was issued, but a Moharir was "appointed to go into the temple and see that the oath has been taken in the manner prescribed and report thereon" and accordingly the Moharir two days afterwards made a report, setting forth that on the previous day the Respondent had under his direction made the oath prescribed and had then made the statement on which the decision of the case depended, *held* that the mere report without such a record of evidence as the law prescribes would not be material on which a Court could legally base a decision. 7 C.P.L.R. 122. D

Evidence conclusive as against person offering to be bound.

11. The evidence so given [1] shall, as against the person who offered to be bound [2] as aforesaid, be conclusive proof [3] of the matter stated [4].

(Notes).

General.

(1) **Construction.**

This section must be read with S. 8 *supra*. 22 W.R. 387. E

(2) **Section not applicable to usual form of oath.**

This section is not applicable to the case where the defendant is examined under the usual form of oath and not under any oath or form of affirmation under S. 8 *supra*. 22 W.R. 387. F

1.—"Evidence so given."

Meaning.

Evidence so taken means evidence taken under S. 8 *supra*. 22 W.R. 387. **F 1**

2.—"As against.... bound."

(i) **Section does not compel Court to accept evidence as conclusive.**

(*a*) There is nothing in this Act constraining a Court to pass a decision in favour of a particular party. If a party to a suit says that he would be bound by the oath of a particular person under the provisions of this section, it means no more than this, that *pro tanto* he will be bound, that is to say, in so far as the matter of that evidence is concerned, and that evidence will be conclusive as to its truth, and the truth of such evidence will be conclusive as against him through the whole of the litigation. But, it does not, in any way, compel the Court trying the case to accept that evidence as conclusive. 14 A. 141=12 A. W. N. 3. **G**

(*b*) Therefore an agreement between parties to a suit that if a certain witness produced a certain document and certain specified words were found therein then judgment should be given for the plaintiff, while if such words were not found therein, judgment should be given for the defendant, though conclusive on the parties to it in respect of the matter of the evidence given thereunder is not conclusive, on the Court so as to oblige it to accept the evidence so given as conclusive upon it. (2 M. 356, *R.*). A.W.N. 1892, 3. **H**

3.—"Conclusive proof."

(1) **Meaning.**

(*a*) The expression "conclusive poof" in this section is to be understood in the sentence in which it is defined by S. 4 of the Evidence Act, 1872. 8 Bom. L. R. 19=1 M.L.T. 63; see 4 B.L.R. 97 (**F.B.**). **I**

(*b*) A statement by a witness that a party is, in possession is in point of law, admissible evidence of the fact that such party is, in possession; and under this section. it is conclusive proof of the matters stated. 8 Bom. L.R. 19=1 M.L.T. 63. **J**

(2) **Effect of an agreement to take oath.**

The agreement to be bound by an oath is, in effect, an agreement to treat the evidence given under the oath as the evidence in the case, and to dispense with other evidence. 17 M.L.J. 99. **K**

(3) **Strict compliance with the agreed form necessary.**

The oath, in order to be binding under this section, must be performed according to the strict terms of the application. A.W.N. (1885) 188. **L**

Example.

The defendant had offered to abide by the deposition by the plaintiff on an oath according to a form which involves the invocation not only of religion and conscience, but also of future hopes and children and the "holy Ganges." The plaintiff simply took oath with reference to his religion and conscience, and not with reference to his future hopes, children and the holy Ganges. *Held* that his deposition is not conclusive proof of the matter stated within the meaning of this section. A.W.N. (1885) 188 **M**

3.—"Conclusive proof"—(Continued).

(4) **Substantial compliance with the agreed form.**

Where the plaintiff made a statement that he would accept whatever amount the defendant would admit as due by taking a special form of oath and the defendant in taking the prescribed form of oath said that certain sum had been due by him to the plaintiff, but, that debt had been set off against a considerably larger sum due by the plaintiff to him in respect of another contract and that the plaintiff's claim was totally false, *held* that the suit must be dismissed as the defendant swore that nothing was due inasmuch the debt had been set off. 31 A. 315=6 A.L.J. 244=2 Ind. Cas. 201. **N**

(5) **Record must show the questions to be decided.**

When a party before a Court agrees to be bound by the oath of the opposite party, the record of the Court must show what questions are to be decided in accordance with the oath. 8 O.C. 11. **O**

(6) **Case involving issues of law and fact—Plaintiff swearing that whole claim is true.**

In a case in which a large number of issues were fixed regarding disputed questions of law and fact and the defendant agreed to abide by plaintiff's oath by *Ganga jali* and the plaintiff on oath with *Ganga jali* said that the whole claim was true and thereupon the Court decreed the suit without considering the question whether the relief claimed could be granted or the question whether the suit was within time or any of the other questions involved in the suit. *Held* that the record of the proceedings regarding the oath was insufficient and that the questions of law should have been decided. 8 O.C. 11. **P**

(7) **Finding on oath, whether *res judicata*.**

(*a*) The decision of a question of title in issue between the parties to a suit in accordance with the provisions of this Act is not an adjudication which will operate as an estoppel when the same question of title is again raised in a subsequent suit between the same parties. 5 M. 259 *contra*; 24 M. 444 *infra*. **Q**

(*b*) "Under British Law, a determination of matters in issue, otherwise than by the Court, is not a *judicium* and will not operate to create an estoppel." *Jenkins* v. *Robertson*, L. R. 1 Scotch App. 117. *Cited* in 5 M. at p. 265. **R**

(*c*) "The terms of the Act indicate that the party consents to be bound only in respect of the subject-matter of the pending proceedings. A party may be willing to risk so much on the conscience of his opponent. He knows, what at the outside, his loss will be, but it would be unreasonable to suggest that he should bind himself further than is necessary for the decision of the pending suit, and, as we have said, we do not understand that the law compels us to hold that he is bound to a greater extent." 5 M. 259 (264, 265). **S**

(*d*) But in 24 M. 444 (447), it was held that as between the parties to a suit, a decree arrived at after the taking of an oath on a question of fact involved in the case is none the less a final adjudication. **T**

(*e*) So also, in a proceeding under S. 144 Cr. P. C., one of the parties undertook to withdraw his claim to the matter in dispute if the other party

3.—"Conclusive proof"—(Concluded).

should take an oath. The latter took the oath in the form proposed. *Held* that the oath is not binding as conclusive evidence in any proceeding other than that in which it was taken, there being nothing to indicate that it was intended that the oath should bind the person, at whose instance it was made, as being conclusive in any proceeding other than the one which the parties had in their minds, when the challenge was given. 33 C. 386=10 C.W.N. 501. **U**

4.—"Of the matter stated."

(1) **Taking oath is no adjustment of suit.**

(*a*) The taking of an oath was itself a mode of adjustment under the old Regulation (III of 1802), but the Regulation was repealed, and when this Act was passed it did not re-enact the provisions of the Regulation. 22 M. at p. 237. **V**

(*b*) The Act does not provide for the adjustment of a suit in an arbitrary way by the oath of a party, but it provides for the conclusive proof of facts by the oath of a party. 22 M. 234. **W**

(2) **Where matter stated is sufficient for decision of suit.**

In the "matter stated" affords sufficient material for the decision of the suit, a decree may be passed on the facts conclusively proved. 22 M. 234 (237). **X**

(3) **Where matter stated is not sufficient—Procedure.**

(*a*) If the facts so proved are not sufficient for the decision of the case, such further facts as are necessary must be proved in the ordinary way, by evidence adduced on both sides. 22 M. 234 (237). **Y**

(*b*) The facts proved by the special oath are conclusively proved and any further evidence that may be taken should be limited to matters not proved by the oath. 22 M. 234. **Z**

(*c*) "It is for the parties and for the Court acting under the provisions of the Act to take care that the facts to be proved by the oath are sufficient for the decision of the suit. Otherwise they must be supplemented by facts proved in the ordinary way." 22 M. 234 (238). **A**

(4) **Person who took oath died—Oath not covered all questions in issue—Procedure.**

The parties to a suit agreed to be bound by the deposition of a referee in the manner contemplated by Ss. 10 and 11 of the Act, and a decree was passed in favour of one of the parties on the strength of that deposition. The referee died afterwards, and it was found on appeal that the said deposition did not fully cover the question in issue between the parties. *Held* that the case was, therefore, to be remanded to the lower Court for disposal according to the usual procedure. 13 A. 386=11 A.W.N. 143 **B**

Procedure in case of refusal to make oath.

12. If the party or witness refuses to make the oath or solemn affirmation [1] referred to in section 8, he shall not be compelled to make it [2], but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his resusal [3].

(Notes).

General.

Scope

(i) This section directs the Court to record as part of the proceedings, the nature of the oath proposed, the fact that the party was asked to make oath and refused, together with any reason assigned for the refusal. *Per White* C.J., 17 M.L.J. 545. C

(ii) The section seems to contemplate that the Court shall give such weight, as it may think fit to the fact that a party has offered to make an oath, and has afterwards refused to make it, while it negatives the view that the refusal to make the oath is, in itself, a ground for dismissing the suit or giving the plaintiff a decree, as the case may be. *Per White, C.J.*, 17 M.L,J. 545. D

(iii) It may be doubted whether this section was intended to apply to a case, in which the parties have arrived at an agreement that one of them shall take on oath, *Per Miller, J.*, 17 M.L.J. 545. E

1.—"If the party.... affirmation."

(1) **Agrreement by plaintiff to take oath or to have suit dismissed—Failure to take oath.**

By an ageement between the parties to a suit, the plaintiff agreed that he should take an oath, and that on his failure to do so, the suit should be dismissed. *Held*, that, on the failure of the plaintiff to take the proposed oath, the agreement could not be recorded as an adjustment of the suit and the suit should be proceeded with. 17 M.L.J. 545. F

(2) **Effect of preventing the oath being taken.**

If the party, who has agreed to be bound, prevents the oath being taken, the other party is entitled to a decree, at any rate, where it is the plaintiff, who agrees to be bound, the result of his refusal to allow the oath to be taken in the form agreed upon is that there is no evidence in support of his case and consequently a dismissal of the suit. 17 M.L.J. 99. G

(3) **Refusal to take oath—Adverse presumption.**

Where the defendant offers to abandon all his claims, to the suit property if the plaintiff would take *koran* in his hands and declare that the defendant's case is false, which the plaintiff refuses to do, the Court is justified in raising a presumption, from the plaintiff's refusal that his case is false, the Court having power so to act under the Act. 2 C.L.R. 476. H

(4) **Construing refusal against—Party so refusing is a material irregularity**

When the plaintiff is willing to have the matter decided by the oath of the defendant and the latter's refusal to take the oath was construed against him and the whole claim of the plaintiff was decreed when only part of it was proved, *held* that such a construction of the defendant's refusal constitutes a material irregularity within the meaning of S. 622 C.P.C. D.C.R. Part X (87). I

2.—" He shall.... it."

No one to be compelled to take oath.

It is not right to compel a man against his will to take an oath, by which he is to allege the existence of particular facts, *Per Miller, J.*, 17 M.L.J. 545. J

3.—" Court shall record....refusal."

Refusal to make oath—Contents of record.

Under this section, it is only if a party refuses to make the oath proposed that the Court is bound to record that he was asked if he would make it and that he refused to do so. 7 C.P.L.R. 122. K

V.—Miscellaneous.

Proceedings and evidence not invalidated by omission of oath or irregularity.

13. No omission[1] to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever, in the form in which any one of them is administered [2], shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth.

(Notes).

General.

Scope of the section.

(i) This section refers to omissions to administer oaths to interpreters and jurors, as well as to witnesses. 9 C. L. J. 690. L

(ii) The mere omission of a Court, otherwise of competent jurisdiction, to do some act preliminary to a proceeding otherwise unexceptionable does not *per se* invalidate such proceedings. 31 P.R. 1889. M

(iii) " This section is only one of many instances indicating the settled policy of the Indian Legislature to prevent justice being defeated by a technical irregularity. It maintains the legal obligation of a witness to speak the truth while at the same time it provides against the possible failure of justice through a technical irregularity." *Per Parker, J.*, 16 M. 105 (115). N

(iv) The law does all in its power to ensure that competent persons shall testify as witnesses in conformity to regulations designed to secure truthfulness. At the same time, this Act enacts that, notwithstanding any default on the part of the Court or of the witness to conform to these regulations, the testimony actually given shall subsist as legal evidence, and that the proceeding whereby it is given shall not be invalidated. 31 P.R. 1889. O

(v) This section "appears to apply, for instance, to the case of a person who has made a statement which is subsequently found to be a false statement —that he shall not get rid of the obligation of stating the truth by setting up a plea that there has been an omission on the part of the Court to administer to him an oath or solemn affirmation." 22 W.R. 1 Cr. = 14 B.L.R. 295 (note). P

(vi) There is a difference between acts of omission and acts of commission and as Sec. 13 only mentions acts of omission, it cannot be extended to acts of commission. 16 M. 105 (113). Q

(vii) In 14 B.L.R. 294, *Jakson, J.* was of opinion that S. 13 was intended to obviate the effect of any evasion on the part of witnesses or mistake on

General.—(*Concluded*).

the part of officers of the Court, and not to give a power to Judges or Magistrates to render the whole Act as it were ineffectual by perversely or erroneously ordering that witnesses should not take an oath or affirmation. **Q1**

(viii) *Quære.*—Whether the omission to swear jury in a Sessions trial is one which could be cured by this section. 20 W.R. 19 (Cr.). **R**

1.''—Omission.''

(1) **Intentional and accidental omission.**

(*a*) Omission in this section includes any omission and is not limited to accidenal or negligent omissions. 23 W.R. 12 (Cr.)=14 B. L. R. 294 (**F.B.**) (*Jackson, J., dissenting*); see also 16 B. 357. **S**

(*b*) This section says that no omission of any kind, whether made knowingly or otherwise, shall render the evidence of a witness inadmissible. 22 W.R. 14 (15) (Cr.)=14 B. L. R. 54. **T**

(*c*) Therefore this section does not render inadmissible the evidence of a child of nine years, if it has been advisedly and not by an omission, recorded without any oath or affirmation. 14 B.L.R. 295 (Note). **U**

(*d*) Omission to administer an oath or solemn affirmation does not vitiate the evidence of witness even though such oath or solemn affirmation was deliberately omitted and under the orders of the Judge and omitted not by accident or negligence, but because of the immature understanding of the witness for comprehending the solemnity of the oath or solemn affirmation. 14 B.L.R. 294=23 W.R. 12 (Cr.) (*Jackson, J., dissenting*); 16 B. 359. **V**

N.B. In the following cases, the contrary view was taken and omission was held to be limited to accidental and not to intentional omission.

(i) The evidence of a child of immature age—who was a competent witness within the meaning of S. 118 of the Evidence Act, for the Sessions Judge considered that she understood the questions put to her and was able to give rational answers to those questions—taken on simple affirmation and not on oath or solemn affirmation, because she was not aware of the responsibility of an oath was held to be admissible as evidence under this section. 22 W.R. 14 Cr.=14 Bom. L.R. 54; 5 Bom. L.R. 551. **W**

(ii) Where a child of about 6 years of age was called as a witness, and the Court being satisfied about his intellectual capacity to give evidence, permitted him to be examined as a witness, but intentionally declined to administer affirmation to the boy on the ground that he was of too tender years to render any attempt to bind his conscience expedient or practically operative, but simply enjoined the child to tell the truth and admitted his evidence, *held* by *Collins, C.J.* thatethe action of the Sessions Judge in not administering an oath or affirmation was irregular and that irregularity was not cured by S. 13 and the evidence of the child was inadmissible.

Per Parker, J. Contra that such intentional omission to administer an oath or affirmation to the child, when the child was otherwise competent to give evidence was cured by S. 13 and the evidence was admissible. 16 M. 105=1 Weir 823. **X**

2.—"No irregularity....administered."

(1) **Wrongness in form immaterial.**

(*a*) This section saves such irregularities as the giving of a wrong form of oath or affirmation. 4 M.H.C.R. 185; 14 B.L.R. 54 (Cr.). **X1**

(*b*) Omission to take any oath or any other irregularity in the form in which it was administered does not invalidate the proceedings. 21 W.R. 31 (Cr.). **Y**

(2) **Substantial compliance with the prescribed form of oath.**

Where the plaintiff stated that he would accept whatever evidence the defendant would give on Ganges water and on his honor and the case might be decided accordingly and the defendant taking Ganges water in his hands swore that nothing was due by him to the plaintiff and that the plaintiff's claim was false inasmuch as the amount due to the plaintiff had been set off against a larger sum due to the defendant. It was contended that the defendant did not take the oath in the prescribed form as he took the oath only on the Ganges water and not also on his honor and secondly that the defendant by his oath admitted his liability for the amount claimed, but pleaded a set off which he did not prove. *Held*: that swearing with Ganges water in hand was a sufficient compliance with the mode prescribed by the plaintiff. 6 A.L.J. 244 = 2 Ind. Cas. 201 = 31 A. 315. **Z**

Persons giving evidence bound to state the truth.

14. Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such (1) subject.

(Notes).

1.—"Shall be bound....truth."

(1) **Obligation to speak truth, independent of administration of oath.**

(*a*) This section does not render the obligation of a witness to speak the truth dependant upon the administration to him of an oath or affirmation. 31 P.R. 1889 (Cr.). **A**

(*b*) The offence of giving false evidence may be committed, although the person giving evidence has been neither sworn or affirmed. 13 C. 355. **B**

(2) **Nullity of trial does not exonerate a witness from speaking truth.**

Where in a dacoity case, the verdict of a jury was set aside and trial *de novo* directed on the ground that one of the jurors originally empanelled was deaf and partially blind, *held* that the nullity of the original trial did not exonerate a witness from the obligation to speak the truth at the first trial imposed by the section. 1 Weir 831. **C**

Amendment of Penal Code, sections 178 and 181.

15. The Indian Penal Code, sections 178 and 181, shall be construed as if, after the word "oath," the words "or affirmation" were inserted.

(Notes).

"Sections 178 and 181."

What those sections about.

S. 178, I.P.C. makes punishable any person who refuses to bind himself by an oath to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself. See S. 178, Act XLV of 1860. **D**

S. 181, I.P.C., makes punishable any person who, being legally bound by an oath to state the truth on any subject to any public servant or other person authorised by law to administer such oath makes to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false or does not believe to be true. See S. 181, I.P.C. **E**

Official oaths abolished.

16. Subject to the provisions of sections 3 and 5, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath, or to make or subscribe any affirmation or declaration whatever.

THE INDIAN OATHS ACT, 1873.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this volume and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S in Brevier Roman denotes the section.

A

Accomplice, not an accused under trial, *V—Y*, **15.**

Person arrested by police as an, *Z*, **15.**

When competent witness, *V—P*, **15**, **16.**

Person to whom pardon was illegally tendered, *F—P*, **16.**

Accused, Who are, *C—G*, **13.**

Meaning of, *Z—B*, **13.**

Who are not, *H—O*, **13**, **14.**

Oath or affirmation not to be administered to, *P*, **14.**

Convicted but not sentenced, *Q*, **14.**

In appeal and revision, *R—U*, **14.**

Not a party within the meaning of S. 8, *C*, *D*, **18.**

Act, Short title of, S. 1, **5.**

Local extent of, S. 1, **5.**

not applicable to proceedings before Courts martial, S. 3, **5.**

Object of the—, *A*, **5.**

Adjustment, Taking oath is no, of suit, *V*, *W*, **28.**

Administer, Authority competent to, oaths and affirmations, S. 4, **6.**

Magistrate holding non-judicial proceeding not competent to, oath, *F*, 6.

See AUTHORISES.

Affirmations, prescribed by law not repealable by Governor-General-in-Council—Applicability of Act, S. 3, **5.**

Authority to administer, S. 4, **6.**

Persons by whom, must be made, S. 5, **7.**

Administering, in a criminal proceeding to the accused, S. 5, **8.**

or oath but not both to be administered, *N*, **8.**

Nature of, to be administered, *O*, **8.**

Difference between a simple, and a solemn, *P*, **8.**

by Natives or by persons objecting to oaths, S. 6, **17.**

Forms of, S. 7, *V—Y*, **17.**

Court may ask party or witness whether he will make, proposed by opposite party, S. 9, **21.**

No person appointed to any office shall be required to make or subscribe any, S. 16, **33.**

Agent, Whether, can offer to make oath, *E—G*, **22.**

Arbitrators, Power of, to administer oaths, *L*, *M*, **7.**

Competency of, to make offer of oath, *U*, **24.**

Competency of, to administer special oath, *V—Z*, **24**, **25.**

Authorises, S. 4—enables, not requires administration of oath, *E*, **6.**

Authority, to administer oaths and affirmations, S. 4, **6.**

C

Civ. Pro. Code, 1882, S. 462—Sanction under, to make offer of oath not necessary, *K*, **23.**

Civil proceeding, Administration of oath in quasi-civil, *X*, *Y*, **13.**

Commanding officer, authorised to administer oaths and affirmations, S. 4, 6.

Commission, See SPECIAL OATH.

Competency, See WITNESS.

Complainant, not a party within the meaning of S. 8, *C*, *D*, **18.**

Conclusive proof, of evidence given on special oath, S. 11, **25.**

Usual form of oath not, of evidence so given, *F*, **25.**

Court not bound to accept evidence given on special oath as, *G*, *H*, **26.**

Meaning of, *I*, *J*, **26.**

Effect of an agreement to take oath, *K*. **26.**

Case involving issues of law and fact—Plaintiff swearing that whole claim is true, *P*, **27.**

Coram non judice, Evidence given, *T*, **12.**

Courts, authorised to administer oaths and affirmations, S. 4, **6.**

Scope, *G*, **7.**

Magistrate acting under S. 164, Cr. P.C., a, *H*, **7.**

Magistrate inquiring under S. 122, Cr. P. C , a, *I*, **7.**

Magistrate holding preliminary inquiry not, a, *J*, **7.**

Local Commissioner not a, *K*, **7.**

Power of, to tender certain oaths, S. 8, **18.**

not includes persons authorized take oath, *Z*, **21.**

Courts Martial, Act not applicable to proceedings before, S. 3, **5.**

Cr. P. C., S. 122—See COURT.

S 164—See COURT.

Person making statement under, *O—Q*, **11**, **12.**

Confession on oath under, *R 1*, **12.**

S. 526—Application for transfer under, is a criminal proceeding, *W*, **12.**

Criminal proceeding, Administering oath or affirmation to the accused in, S. 5, **8.**

Application for transfer under S. 526, Cr. P. C., is a, *W*, **12.**

S. 8 not applicable to, *Z*, *A*, **18.**

See CIVIL PROCEEDING.

D

Declarations, prescribed by law not repealable by Governor-General-in-Council—Applicability of Act, S. 3, **5.**

No person appointed to any office shall be required to make or subscribe any, S. 16, **33.**

E

Evidence, Person making statement under Ss. 164, Cr. P. C., *O—Q*, **11**, **12**.
given *coram non judice*, *T*, **12**.
given on special oath conclusive as against person offering to be bound, S. **11**, **25**.
Court not bound to accept, given on special oath as conclusive, *G*, *H*, **26**.
not invalidated by omission of oath or irregularity, S. 13, **30**.
Evidence so given, Meaning of, S. 11, *F*, **26**.
Extent, Local, of the Act, S. 1, **5**.

F

Forms, of oaths and affirmations, S. 7, *V—Y*, **17**.
of oath to be a binding one, *V*, *W*, **21**.
Strict compliance with the agreed form necessary, *L*, *M*, **26**.
Wrongness in, of oath immaterial, *X*, *Y*, **32**.

G

Guardian, power of, *ad litem* to make offer of oath, *H—J*, **22**.

H

History, of judicial oaths, *B*, **5**.

I

Infants, at what age, may be examined. *X—Z*, **9**.
See WITNESS.
Interpreters, to make oaths or affirmations, S. 5, **7**.
Omission to administer oath to,—Effect, *U*, *V*, **12**.
A Hindu or Mahomedan, shall make an affirmation, S. 6, **17**.
Irregularity, in the form of oath administered—Effect S. 13, **30**—Scope of S. 13, *L—R*, **30**, **31**.

J

Judicial, History of, oaths, *B*, **5**.
Judicial proceedings, Test of, *E*, **19**.
What are, *E—I*, **19**.
Inquiries under Cr.P.C., whether, *F*, **19**.
Whether other inquiries are, *G*, *H*, **19**.
Proceedings of a Sub-Registrar, *I*, **19**.
Administrative inquiries not, *J*, **19**.
Trial under Frontier Regulations not, *K*, **19**.
Proceedings before Tahsildar—Resistance to arrest, not *L*, **19**.
Proceedings of Revenue Officer inquiring into matters not provided by the rules not, *M*, **19**.
What are not, *J—U*, **19**, **20**.
Proceedings held by Magistrate in his executive capacity—not, *N*, **20**.
Proceedings after decree taken on report of Nazir not, *O*, **20**.
Proceedings of Magistrate under S. 88, Cr. P. C., not, *Q*, **20**.

Judicial proceedings—(Concluded).

Illegal order of Magistrate directing detention in custody of persons acquitted by Session Judge, *R*, **20.**

Enquiry by Magistrate not authorised to conduct is not, *S*, **20.**

Proceedings under Land Acquisition Act, *T*, *U*, **20.**

Jurors, to make oaths or affirmations, S. 5, **7.**

A Hindu or Mahomedan, shall make an affirmation, S. 6, **17.**

K

Kalma, repetition of, *U*, **17.**

L

Local Commissioner, not a Court, *K*, **7.**

not competent to administer oath, *A*, **21.**

M

Magistrate, see COURT.

Matter stated, where, is not sufficient for decision of suit, *Y*, *A*, **28.**

Where, is sufficient for decision of suit, *X*, **28.**

N

Nazir, proceedings after decree taken on report of, *O*, **20.**

Non-judicial, oath in a—, proceedings— Effect, *F*, **6.**

Magistrates holding, proceeding incompetent to administer oath, *F*, **6.**

O

Oaths, prescribed by law not repealable by Governor-General-in-Council—Applicability of Act, S. 3, **5.**

History of judicial, *B*, **5.**

Authority to administer, S. 4, **6.**

Definition of, *C*, *D*, **6.**

In a non-judicial proceeding—Effect, *F*, **6.**

Magistrate holding non-judicial proceeding incompetent to administer, *F*, **6.**

Persons by whom, must be made, S. 5, **7.**

Competency of arbitrators to administer, *L*, *M*, **7.**

Administering, in a criminal proceeding to the accused, S. 5, **8.**

or affirmation but not both to be administered, *N*, **8.**

Inability to understand, and intellectual incapacity—Relation, *E*, *F*, **10.**

Religious belief whether necessary for administration of, *G*—*N*, **10, 11.**

Confession on, under S. 164, Cr.P.C., *R1*, **12.**

Omission to administer, to interpreters—Effect, *U*, *V*, **12.**

Administration of, in *quasi* civil proceeding, *X*, *Y*, **13.**

Forms of, S. 7, *V*—*Y*, **17.**

Power of Courts to tender certain, S. 8, **18.**

Court may ask party or witness whether he will make, proposed by opposite party, S. 9, **21.**

Form of, to be a binding one, *V*, *W*, **21.**

Oaths—(Concluded),
affecting a third person, *X*, *Y*, **21.**
Who can offer to make, *B*, **22.**
Whether agent or pleader can offer to make, *E—G*, **22.**
Power of guardian *ad litem* to make offer of, *H—J*, **22.**
Retraction by the party making the offer of, *L—R*, **23.**
Administration of, if accepted, S, 10, **24.**
By a person outside the case, *S*, *T*, **24.**
Effect of an agreement to take, *K*, **26.**
Finding on oath whether *res judicata*, *Q—U*, **27, 28.**
Taking oath is no adjustment of suit *V*, *W*, **28.**
Refusal to take oath—Adverse presumption, *H*, *I*, **29.**
No one to be compelled to take, *J*, **29.**
Obligation to speak truth independent of administration of, *A*, *B*, **32.**
See OFFICIAL OATHS.
See PROCEDURE.
See WITNESS.
Official oaths, abolition of, S. 16, **33.**
Omission, to take oath—Effect, S. 13, **30**—Scope of, S. 13, *L—R*, **30.**
Intentional and accidental, to take oath, *S—X*, **31.**

P

Pardon, competency of persons to whom pardon was illegally tendered, *F—P*, **16.**
Party, in S. 8 does not include complainant or accused, *C*, *D*, **18.**
Court may ask, whether he will make oath proposed by opposite party, S. 9, **21.**
not to be compelled to attend Court to answer if he would make oath proposed by opposite party, S. 9, **21.**
Penal Code, Ss. 178, 181—Construction, S. 15, **32.**
Persons, authorised to administer oaths and affirmations, S. 4, **6.**
by whom oaths or affirmations must be made, S. 5, **7.**
Pleader, whether, can offer to make oath, *E—G*, **22.**
Policeman, not a Judge, *P*, **20.**
Presumption, refusal to take oath, *H*, *I*, **29.**
Proceedings, not invalidated by omission of oath or irregularity, S. 13, **30.**
See JUDICIAL PROCEEDINGS.
Procedure, person who took oath died—Oath not covered all questions in issue, *B*, **28.**
Where matter stated is not sufficient for decision of suit, *Y—A*, **28.**
Where matter stated on special oath is sufficient for decision of suit, *Y—A*, **28.**
in case of refusal to make oath, S. 12, **28**—Scope of S. 12, *C—E*, **29.**
Agreement by plaintiff to take oath to have suit dismissed—Failure to take oath, *F*, **29.**
Effect of preventing the oath from being taken, *G*, **29.**
Refusal to take oath—Adverse presumption, *H*, *I*, **29.**
Proof, see CONCLUSIVE PROOF.

R

Religious belief, whether necessary for administration of oath, *G—N*, **10, 11.**

Res judicata, finding on oath whether *res judicata*, *Q—U*, **27, 28.**

Res gestae, Competency of witness to be tested before examination as to, *A*, *B*, **9.**

Revenue Officer, proceedings before Tahsildar--Resistance to arrest—Not judicial proceedings, *L*, **19.**

Proceedings of, enquiring into matters not provided by the rules not judicial proceedings, *M*, **19.**

S

Saving, of certain oaths and affirmations, S. 3, **5.**

Special oath, competency of arbitrators to administer, *V—Z*, **24, 25.**

Conclusive proof of evidence given on, S. 11, **25.**

Discretion of Court to administer, *A*, **25.**

Power to issue commission to administer, *B*, **25.**

Omission to issue commission, *C*, **25**

No formal commission—Mere report, *D*, **25.**

Court not bound to accept evidence given on, as conclusive, *G*, *H*, **26.**

Strict compliance with the agreed form necessary, *L*, *M*, **26.**

Substantial compliance with the agreed form, *N*, **27.**

Record must show the questions to be decided, *O*, **27.**

Case involving issues of law and fact—Plaintiff swearing that whole claim is true, *P*, **27.**

Substantial compliance with the prescribed form, *Z*, **32.**

See OATH.

Statute, 24 & 25, Vict. C. 67—Indian Councils Act, 1861—Saving of certain oaths, S. 3, **5.**

T

Tender, power of Court to, certain oaths, S. 8, **18.**

Third person, oath affecting a, *X*, *Y*, **21.**

Truth, persons giving evidence bound to state the, S. 14, **32.**

Obligation to speak, independent of administration of oath, *A*, *B*, **32.**

Nullity of trial does not exonerate a witness from speaking truth, *C*, **32.**

W

Witnesses, to make oaths or affirmations, S. 5, **7.**

Who may testify, *Q*, **8.**

What determines competency of persons to testify, *R*, *S*, **8.**

Competency of witness of tender years—English and Indian Law, *T—W*, **8, 9.**

Competency of, to be tested before examination as to *res gestae*, *A*, *B*, **9.**

At what ages infants may be examined, *X—Z*, **9.**

Competency to testify a condition precedent to administration of oath, *C*, **10.**

Inability of, to understand oath, *D*, **10.**

Magistrate examining a person to start a case, *S*, **12.**

Competency of accomplice to be, *V—P*, **15, 16.**

A Hindu or Mahomedan, shall make an affirmation, S. 6, **17.**

Court may ask, whether he will make oath proposed by opposite party, S. 9, **21.**

not to be compelled to attend Court to answer if he would make oath proposed by opposite party, S. 9, **21.**

See TRUTH.

Wrongness, in the form of oath immaterial, *X*, *Y*, **32.**

THE LAW PRINTING HOUSE, MOUNT ROAD, MADRAS.

THE LAWYER'S COMPANION SERIES.

THE PRISONERS ACT, 1900

(ACT III OF 1900)

(WITH THE CASE-LAW THEREON)

BY

T. V. SANJIVA ROW,

FIRST GRADE PLEADER, TRICHINOPOLY,

(AUTHOR OF A "DIGEST OF PRIVY COUNCIL RULINGS,"
THE "CURRENT INDEX OF INDIAN CASES,"
THE "LAWYER'S REFERENCE,"
AND
THE "INDIAN EVIDENCE ACT.")

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THE PRISONERS ACT, 1900.

CONTENTS.

PART I.

PRELIMINARY.

SECTIONS.

1. Short title, extent and commencement.
2. Definitions.

PART II.

GENERAL.

3. Officers in charge of prisons to detain persons duly committed to their custody.
4. Officers in charge of prisons to return writs, etc., after execution or discharge.

PART III.

PRISONERS IN THE PRESIDENCY-TOWNS.

5. Warrants, etc., to be directed to Police-officers.
6. Power for Local Governments to appoint Superintendents of Presidency prisons.
7. Delivery of persons sentenced to imprisonment or death by High Court.
8. Delivery of persons sentenced to transportation or penal servitude by High Court.
9. Delivery of persons committed by High Court in execution of a decree or for contempt.
10. Delivery of persons sentenced by Presidency Magistrates.
11. Delivery of persons committed for trial by High Court.
12. Custody pending hearing by High Court under section 350 of the Code of Civil Procedure of application for insolvency.
13. Delivery of persons arrested in pursuance of warrant of High Court or Civil Court in Presidency-town.

PART IV.

PRISONERS OUTSIDE THE PRESIDENCY-TOWNS.

14. References in this Part to prisons, etc., to be construed as referring also to Reformatory Schools.
15. Power for officers in charge of prisons to give effect to sentences of certain Courts.

SECTIONS.

16. Warrant of officer of such Court to be sufficient authority.
17. Procedure where officer in charge of prison doubts the legality of warrant sent to him for execution under this Part.
18. Execution in British India of certain capital sentences not ordinarily executable there.

PART V.

PERSONS UNDER SENTENCE OF PENAL SERVITUDE.

19. Persons under sentence of penal servitude how to be dealt with.
20. Enactments respecting persons under sentence of transportation or imprisonment with hard labour applied to persons under sentence of penal servitude.
21. Power to grant license to person sentenced to penal servitude.
22. Licensee to be allowed to go at large.
23. Apprehension of convict where license revoked.
24. Execution of warrant.
25. Licensee when arrested to be brought up for recommitment.
26. Recommitment.
27. Penalty for breach of condition of the license.

PART VI.

REMOVAL OF PRISONERS.

28. References in this Part to prisons, etc., to be construed as referring also to Reformatory Schools.
29. Removal of prisoners.
30. Lunatic prisoners how to be dealt with.
31. [*Repealed.*]

PART VII.

PERSONS UNDER SENTENCE OF TRNSPORTATION.

32. Appointment of places for confinement of persons under sentence of transportation and removal thereto.

PART VIII.

DISCHARGE OF PRISONERS.

33. Release, on recognizance, by order of High Court, of prisoner recommended for pardon.

SECTIONS.

PART IX.

PROVISIONS FOR REQUIRING THE ATTENDANCE OF PRISONERS AND OBTAINING THEIR EVIDENCE.

Attendance of Prisoners in Court.

34. References in this Part to prisons, etc., to be construed as referring also to Reformatory Schools.
35. Power for Civil Courts to require appearance of prisoner to give evidence.
36. District Judge in certain cases to countersign orders made under section 35.
37. Power for certain Criminal Courts to require attendance of prisoner to give evidence or answer to charge.
38. Order to be transmitted through Magistrate of the district or subdivision in which person is confined.
39. Procedure where removal is desired of person confined in Presidency-town or more than one hundred miles from place where evidence is required.
40. Persons confined beyond limits of appellate jurisdiction of High Court.
41. Prisoner to be brought up.
42. Power to Government to exempt certain prisoners from operation of this Part.
43. Officer in charge of prison when to abstain from carrying out orders.

Commissions for Examination of Prisoners.

44. Commissions for examination of prisoners.
45. Commissions for examination of prisoners beyond limits of appellate jurisdiction of High Court.
46. Commission how to be directed.

Service of Process on Prisoners.

47. Process how served on prisoners.
48. Process served to be transmitted at prisoner's request.
49. Application of this Part in certain cases.
50. Deposit of costs.
51. Power to make rules under this Part.
52. Power to declare who shall be deemed officer in charge of prison.
53. Repeals.

SCHEDULES.

THE PRISONERS ACT, 1900.

ACT No. III OF 1900.

[*2nd February, 1900.*]

An Act to consolidate the law relating to Prisoners confined by order of a Court.

WHEREAS it is expedient to consolidate the law relating to prisoners[1] confined by order of a Court; It is hereby enacted as follows:—

(Notes).

1.—"To consolidate....prisoners."

Interpretation of consolidating and codifying Laws.

The Act merely effects a *consolidation* and not a codificationsof the law relating to prisoners. In interpreting a codifying law, the proper course is in the first instance to examine the language of the Statute, and to ask what is its natural meaning uninfluenced by any considerations derived from the previous state of the law. (Per Lord *Herschell, in Bank of England* v. *Vagliano*, (1891), App. Cas. 144 *followed* in 23 I.A. 18 (**P.C.**) = 23 C. 563. See also 24 C. 406.) But, in the case of a consolidating Act, knowledge of the previously existing law, as established by statutory enactments and reported dicisions is essential. *Mitchell* v. *Simpson*, 25 Q.B.D. 183 ; see also *re* Budgett (1894), 2 Ch. 557. **A**

PART I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called the Prisoners Act, 1900.

(2) It extends to the whole of British India[1], inclusive of British Baluchistan, the Santhal Parganas and the Pargana of Spiti ; and

(3) It shall come into force at once.

(Notes).

1.—"It extends....British India."

"British India," meaning of.

"British India" means all territories and places within Her Majesty's dominions which are, for the time being, governed by Her Majesty through the Governor-General or other officer subordinate to the Governor-General of India. . (General Clauses Act X of 1897, S. 3 (7). **B**

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "Court" includes a Coroner [1] and any officer lawfully exercising civil, criminal or revenue jurisdiction; and

(*b*) "prison" includes any place which has been declared by the Local Government, by general or special order, to be a subsidiary jail.

(Note).

1.—"Court includes a Coroner."

Coroner's Act, where in force.

The law relating to Coroners is contained in Act IV of 1871, as amended by later Acts. The Act originally applied to all the Presidency towns. But in Madras the office of Coronor was abolished by Act V of 1899, and the Coroners Act is now in force only in the towns of Calcutta and Bombay. **C**

PART II.

GENERAL.

Officers in charge of prisons to detain persons duly committed to their custody.

3. The officer in charge of a prison shall receive and detain all persons duly committed to his custody, under this Act or otherwise, by any Court, according to the exigency of any writ, warrant or order by which such person has been committed, or until such person is discharged or removed in due course of law.

Officers in charge of prisons to return writs, etc., after execution or discharge.

4. The officer in charge of a prison shall forthwith, after the execution of every such writ, order or warrant as aforesaid other than a warrant of commitment for trial, or after the discharge of the person committed thereby, return such writ, order or warrant to the Court by which the same was issued or made, together with a certificate, endorsed thereon [1] and signed by him, showing how the same has been executed, or why the person committed thereby has been discharged from custody before the execution thereof.

(Notes).

1.—"Return.... thereon."

Return of warrant on execution of sentence.

Under S. 400, Cr.P.C., when a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed. **D**

PART III.

PRISONERS IN THE PRESIDENCY-TOWNS [1].

Warrants, etc., to be directed to Police-officers.

5. Every writ or warrant for the arrest of any person issued by the High Court [2] in the exercise of its ordinary, extraordinary or other criminal jurisdiction [3] shall be directed to and executed by a Police-officer [4] within the local limits of such jurisdiction.

(Notes).

1.—"Prisoners in the Presidency-towns."

Presidency-town, meaning of.

"Presidency-town" means the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be. (General Clauses Act X of 1897, S. 3 (41). **E**

2.—"Every writ....High Court."

(1) **High Court, meaning of.**

As this part refers only to prisoners in the Presidency towns, the expression 'High Court' in this part means only the High Court at Fort William, Madras, or Bombay. **F**

(2) **Writs and warrants of the High Court—Form of.**

All writs and warrants issued by any of the High Courts referred to in this section shall run and be in the name of His Majesty, and shall be sealed with the seal of that Court. (See Letters Patent, Cl. 7). **G**

3.—"In the exercise....jurisdiction."

(1) **High Courts' ordinary original criminal jurisdiction—Extent of.**

Under the Letters Patent, cls. 22 and 23, each of the said High Courts, has ordinary original criminal jurisdiction within the local limits of its ordinary original civil jurisdiction, and also over all persons beyond such limits over whom the High Court had criminal jurisdiction at the date of the publication of the Letters, and in the exercise of such jurisdiction it is empowered to try all persons brought before it in due course of law. **H**

(2) **Extraordinary original criminal jurisdiction—Extent of.**

The Extraordinary Criminal jurisdiction of the High Court extends over all persons residing in places within the jurisdiction of any Court subject to its superintendence, and it has authority to try at its discretion any such persons brought before it on charges preferred by the Advocate-General, or by any Magistrate or other officer specially empowered by the Goverment in that behalf. (Letters Patent, cl. 24). **I**

(3) **Other criminal jurisdiction, meaning of.**

(*a*) The expression other criminal jurisdiction does not refer to the appellate or Revisional Criminal jurisdiction of the High Court, 6 C.W.N. 254. **J**

(*b*) But the expression refers to all such criminal jurisdiction which the High Court exercises as a Court of Admiralty, Vice-Admiralty or otherwise in connection with maritime matters or matters of prize under cl. 33 of the Letters Patent. **K**

4.—"Shall be directed....Police officer."

(1) **Warrant to more Police officers than one.**

(a) As under S. 13 (2) of the General Clauses Act, words in the singular include the plural unless there is anything repugnant in the subject or context, the term a 'police officer' in the present section includes also police officers, and the High Court may issue a warrant to more police officers than one. See also S. 77, XX, Cr.P.C. 1898. **L**

(b) Similarly, a warrant of arrest issued by a Presidency Magistrate shall be directed to one or more police-officers. See S. 77, Cr.P.C. 1898. **M**

(c) A warrant directed to more officers than one may be executed by all or any one or more of them. S. 77 (2), Cr.P.C. 1898. **N**

(2) **Execution of warrant by endorsee.**

A warrant directed to any police officer may also be executed by any other police officer to whom it is directed or endorsed. S. 79, Cr.P.C. 1898. **O**

(3) **Arrest by process serving peon, illegal.**

A process-serving peon is not a police officer and is not competent to execute a warrant of arrest. 27 C. 457 = 4 C.W.N. 822. **P**

(4) **Warrant of arrest, where may be executed.**

A warrant of arrest may be executed at any place in British India. S. 82, Cr. P.C. 1898. **Q**

Power for Local Governments to appoint Superintendents of Presidency prisons.

6. The Local Government [1] may appoint officers who shall have authority to receive and detain prisoners committed to their custody under this Part.

Explanation.—Any officer so appointed, by whatever designation he may be styled, is hereinafter referred to as "the Superintendent."

(Notes).

1.—"The Local Government."

"Local Government" meaning of.

The expression "Local Government" means the person authorised by law to administer executive government in the part of British India in which the Act or Regulation containing the expression, operates, and includes a Chief Commissioner. (See General Clauses Act X of 1897, S. 3 (29). See also 6 C.W.N. 254. **R**

Delivery of persons sentenced to imprisonment or death by High Court.

7. Where any person is sentenced by the High Court in the exercise of its original criminal jurisdiction to imprisonment or to death [1], the Court shall cause him to be delivered to the Superintendent, together with its warrant, and such warrant shall be executed by the Superintendent and returned by him to the High Court when executed [2].

(Notes).

1.—" Where any person.... death."

Death sentence by Sessions Court not executable until confirmed.

As a death sentence passed by a Court of Sessions cannot be executed until confirmed by the High Court, the prisoner on conviction is committed to jail under a warrant in form No. 34 of Sch. V, Cr.P.C. If the sentence is confirmed, the Sessions Court issues another warrant in form No. 35 of the said schedule for carrying out the sentence.

N.B.—As to the explanation of the expression "original criminal jurisdiction of the High Court" see notes under S. 5. **S**

2.—" Such warrant.... executed."

Warrant to whom addressed.

The warrant should be addressed to the Superintendent.

N.B.—As to the return of the warrant see notes under S. 4, *supra*. **T**

Delivery of persons sentenced to transportation or penal servitude by High Court.

8. Where any person is sentenced by the High Court in the exercise of its original criminal jurisdiction to transportation [1] or penal servitude [2], the Court shall cause him to be delivered for intermediate custody to the Superintendent, and the transportation or penal servitude of such person shall be deemed to commence from such delivery.

(Notes).

General.

N.B.—See also S. 383, Cr.P.C. 1898, as to the issuing of a warrant for the confinement of a person sentenced to transportation.

1.—" Where any person.... transportation."

(1) **Sentence of transportation—Not to specify place of transportation.**

No sentence of transportation should specify the place to which the person sentenced is to be transported. S. 368 (2), Cr.P.C. 1898. **U**

(2) **Offenders sentenced to transportation, how dealt with until transported.**

A person sentenced to transportation shall, until he is transported, be dealt with as if sentenced to rigorous imprisonment, and shall, during that period of imprisonment, be deemed to be undergoing the sentence of transportation. See S. 58, I.P.C. **V**

2.—" Penal servitude."

Penal servitude, when to be imposed.

The punishment of penal servitude can be imposed only on an European or American, and only when he is convicted of an offence punishable under the Indian Penal Code with transportation, in which case the Court shall sentence the offender to penal servitude instead of transportation, according to the provisions of Act XXIV of 1855. See S. 56, I.P.C., and the proviso to that section. **W**

Delivery of persons committed by High Court in execution of a decree or for contempt.

9. Where any person is committed by the High Court, whether in execution of a decree or for contempt of Court or for any other cause [1], the Court shall cause him to be delivered to the Superintendent, together with its warrant of commitment.

(Notes).

1.—" Where....cause."

(1) **Section inapplicable to persons sentenced.**

The Act draws a distinction between the case of a 'person sentenced' and that of a person who is 'committed' ; the section does not apply to the former case. 6 C.W.N. 254 (261). **X**

(2) **Person sentenced on reference under S. 307, Cr.P. Code, confinement of.**

A sentence passed by the High Court on a reference under S. 307, Cr. P. C is passed by it not in the exercise of its ordinary Original Criminal jurisdiction, but as a Court of Reference in a criminal matter, and there is nothing in the Act to make it compulsory on the Court which passed the sentence to direct that the prisoner should be imprisoned only in the Presidency Jail. 6 C.W.N. 254. **Y**

(3) **Courts competent to commit for contempt.**

(*a*) Only a Court of Record has an inherent jurisdiction to commit for contempt. 26 M. 494. **Z**

(*b*) A District Court is not a Court of Record and has therefore no inherent power to commit for contempt. (*Ibid.*) **A**

Delivery of persons sentenced by Presidency Magistrates.

10. Where any person is sentenced by a Presidency Magistrate to imprisonment, or is committed to prison for failure to find security to keep the peace or to be of good behaviour, the Magistrate shall cause him to be delivered to the Superintendent, together with his warrant.

(Notes).

General.

N.B.—The provisions as to security for keeping the peace and for good behaviour are contained in Ch. VIII, Cr.P.C. 1898.

Delivery of persons committed for trial by High Court.

11. Every person committed by a Magistrate, [or Justice of the Peace] [1] for trial by the High Court in the exercise of its original criminal jurisdiction shall be delivered to the Superintendent, together with a warrant of commitment, directing the Superintendent to produce such person before the Court for trial; and the Superintendent shall, as soon as practicable, cause such person to be taken before the Court at a criminal session thereof, together with the warrant of commitment, in order that he may be dealt with according to law.

(Notes).

1.– "Every person.... Coroner."

(1) **Commitments by Magistrates.**

All commitments by Presidency Magistrates should be to the High Court. But a mofussil Magistrate can make a commitment to the High Court only when the accused or one of the accused is a European British subject charged with an offence punishable with death or transportation for life, and the Magistrate is a Justice of the Peace, a Magistrate of the First Class, and except in the case of a District Magistrate, a European British subject. See Ss. 442, 447 & 452, Cr. P. C. 1898. **B**

(2) **Justices of the Peace.**

As to who can be appointed—for the mofussil and the Presidency towns, vide Ss. 22 & 23, Cr. P. C. 1898, as to ex-officio Justices of the Peace, see S. 25, *Ibid.* **C**

N. B.—The jurisdiction of—in the mofussil is confined to cases against European British subjects and would be of a different nature from that of —in the Presidency towns. The duties and powers of the latter are prescribed by various Local Acts.

(3) **Commitment by Coroner.**

In Calcutta and Bombay where the Coroner's Act is in force an inquisition made by a Coroner has the effect of a valid commitment to the High Court in the exercise of its ordinary original criminal jurisdiction, when the High Court has accepted such commitment. 31 C. 1=7 C.W.N. 889. **D**

(4) **Presidency Magistrate's jurisdiction not ousted by Coroner's commitment.**

The drawing up of an inquisition by the Coronor, however, does not of itself oust a Presidency Magistrate of his jurisdiction to inquire into or try the case of the accused. Until the High Court has accepted such commitment, the Magistrate is not ousted of his jurisdiction, and any order of acquittal or discharge that he may make will be operative, subject to the discretion of the High Court, when the time comes for it to consider whether it should take action upon the Coroner's inquisition as an effective commitment. (*Ibid.*) **E**

Custody pending hearing by High Court under section 350 of the Code of Civil Procedure of application for insolvency.

12. The High Court may, pending the hearing, under section 350 of the Code of Civil Procedure, of any application for a declaration of insolvency, cause the judgment-debtor concerned to be delivered to the Superintendent, subject to the provisions as to release on security of section 349 of the said Code, and the Superintendent shall detain the said judgment-debtor in safe custody until he is re-delivered to an officer of the High Court for the purpose of being taken before it in pursuance of its order, or until he is released in due course of law.

(Notes).

General.

Application of the section.

Ch. XX of the C.P.C., of 1882 (Ss. 344 to 360-A) was by S. 360-A of that Code rendered inapplicable to the Courts in the Presidency towns and in Rangoon and its application was, therefore, limited to Courts in the mofussil. The whole of that chapter was repealed by the Provincial Insolvency Act of 1907, which now contains the law of Insolvency in the mofussil, and the new Code of Civil Procedure (Act V of 1908) contains no provision corresponding to Ch. XX of the old Code. The present section must therefore be considered to have been rendered obsolete. F

Delivery of persons arrested in pursuance of warrant of High Court or Civil Court in Presidency-town.

13. (1) Every person arrested in pursuance of a writ, warrant or order of the High Court in the exercise of its original civil jurisdiction, or in pursuance of a warrant of any Civil Court established in a Presidency-town under any law or enactment for the time being in force, or in pursuance of a warrant issued under section 5, shall be brought without delay before the Court by which, or by a Judge of which, the writ, warrant or order was issued, awarded or made, or before a Judge thereof, if the said Court, or a Judge thereof, is then sitting for the exercise of original jurisdiction.

(2) If the said Court, or a Judge thereof, is not then sitting for the exercise of original jurisdiction, such person arrested as aforesaid shall, unless a Judge of the said Court otherwise directs, be delivered to the Superintendent for intermediate custody, and shall be brought before the said Court, or a Judge thereof at the next sitting of the said Court, or of a Judge thereof, for the exercise of original jurisdiction in order that such person may be dealt with according to law; and the said Court or Judge shall have power to make or award all necessary orders or warrants for that purpose.

PART IV.

PRISONERS OUTSIDE THE PRESIDENCY-TOWNS.

References in this Part to prisons, etc., to be construed as referring also to Reformatory Schools.

14. In this Part all references to prisons or to imprisonment or confinement shall be construed as referring also to Reformatory Schools or to detention therein.

(Notes).

General.

N.B.—S. 399, Cr. P. C., provides for the confinement of youthful offenders in reformatories. But the section does not apply to any place in which the Reformatory Schools Act 1897 is in force. This Act is in force throughout British India except Punjab, Coorg and the scheduled districts.

Under that Act any boy under 15 years, convicted of any offence punishable with transportation or imprisonment is liable to be detained in a Reformatory. **G**

Power for officers in charge of prisons to give effect to sentences of certain Courts.

15. (1) Officers in charge of prisons outside the Presidency-towns may give effect to any sentence or order or warrant for the detention of any person passed or issued—

(*a*) by any Court or tribunal acting, whether within or without British India, under the general or special authority of Her Majesty, or of the Governor General in Council, or of any Local Government; or

(*b*) by any Court or tribunal in the territories of any Native Prince or State in India—

(i) if the presiding Judge, or, if the Court or tribunal consists of two or more Judges, at least one of the Judges, is an officer of the British Government authorized to sit as such Judge by the Native Prince or State or by the Governor General in Council, and

(ii) if the reception, detention or imprisonment in British India or in any province of British India of persons sentenced by any such Court or tribunal has been authorized by general or special order by the Governor General in Council or the Local Government, as the case may be; or

(*c*) by any other Court or tribunal in the territories of any Native Prince or State in India, with the previous sanction of the Governor General in Council or of the Local Government in the case of each such sentence, order or warrant.

(2) Where a Court or tribunal of such a Native Prince or State has passed a sentence which cannot be executed without the concurrence of an officer of the British Government, and such sentence

has been considered on the merits and confirmed by any such officer specially authorized in that behalf, such sentence, and any order or warrant issued in pursuance thereof, shall be deemed to be the sentence, order or warrant of a Court or tribunal acting under the authority of the Governor General in Council.

Warrant of officer of such Court to be sufficient authority.

16. A warrant under the official signature of an officer of such Court or tribunal as is referred to in section 15 shall be sufficient authority for holding any person in confinement, or for sending any person for transportation, in pursuance of the sentence passed upon him.

Procedure where officer in charge of prison doubts the legality of warrant sent to him for execution under this Part.

17. (1) Where an officer in charge of a prison doubts the legality of a warrant or order sent to him for execution under this Part, or the competency of the person whose official seal or signature is affixed thereto to pass the sentence and issue the warrant or order, he shall refer the matter to the Local Government, by whose order on the case he and all other public officers shall be guided as to the future disposal of the prisoner.

(2) Pending a reference made under sub-section (1), the prisoner shall be detained in such manner and with such restrictions or mitigations as may be specified in the warrant or order.

Execution in British India of certain capital sentences not ordinarily executable there.

18. (1) Where a British Court exercising, in or with respect to territory beyond the limits of British India, jurisdiction which the Governor General in Council has in such territory,—

(*a*) has sentenced any person to death ; and

(*b*) being of opinion that such sentence should, by reason of there being in such territory no secure place for the confinement of such person or no suitable appliances for his execution in a decent and humane manner, be executed in British India, has issued its warrant for the execution of such sentence to the officer in charge of a prison in British India,

such officer shall, on receipt of the warrant, cause the execution to be carried out at such place as may be prescribed therein in the same manner and subject to the same conditions in all respects as if it were a warrant duly issued under the provisions of section 381 of the Code of Criminal Procedure, 1898.

V of 1898.

(2) The prisons of which the officers in charge are to execute sentences under any such warrants as aforesaid shall be such as the Governor General in Council or a Local Government authorized by the Governor General in Council in this behalf may, by general or special order, direct.

(3) A Court shall be deemed to be a British Court for the purposes of this section if the presiding Judge, or, if the Court consist of two or more Judges, at least one of the Judges, is an officer of the British Government authorized to act as such Judge by any Native Prince or State in India or by the Governor General in Council:

Provided that every warrant issued under this sub-section by any such tribunal shall, if the tribunal consists of more than one Judge, be signed by a Judge who is an officer of the British Government authorized as aforesaid.

PART V.

PERSONS UNDER SENTENCE OF PENAL SERVITUDE.

Persons under sentence of penal servitude how to be dealt with.

19. (1) Every person under sentence of penal servitude may be confined in such prison within British India as the Governor General in Council, by general order, directs, and may, while so confined, be kept to hard labour and until he can conveniently be removed to such prison, be imprisoned, with or without hard labour, and dealt with in all other respects as persons under sentence of rigorous imprisonment may, for the time being, by law be dealt with.

(2) The time of such intermediate imprisonment, and the time of removal from one prison to another, shall be taken and reckoned in discharge or part discharge of the term of the sentence.

(Note).

General.

Persons sentenced to transportation, how dealt with.

For the corresponding provision in the case of persons sentenced to transportation, see S. 58, I.P.C., noted under S. 8, *supra*. **H**

Enactments respecting persons under sentence of transportation or imprisonment with hard labour applied to persons under sentence of penal servitude.

20. Every enactment now in force in British India with respect to persons under sentence of transportation, or under sentence of imprisonment with hard labour, shall, so far as is consistent with this Act be construed to apply to persons under sentence of penal servitude.

Power to grant license to person sentenced to penal servitude.

21. (1) The Governor General in Council may grant to any person under sentence of penal servitude a license [1] to be at large within British India or in such part thereof as is in such license expressed, during such portion of his term of penal servitude and upon such conditions as the Governor General in Council may think fit.

(2) The Governor General in Council may revoke or alter any license granted under sub-section (1).

(Notes).

1.—"The Governor-General in Council....license."

(1) **Commutation of sentences.**

Under S. 402, Cr.P.C. 1898, the Governor General in Council or the Local Government may, without the consent of the person sentenced, commute a sentence of penal servitude to one of imprisonment, rigorous or simple or to one of fine.

N.B.—As to commutation of sentences see, further, Ss. 54 & 55, I.P.C. **I**

(2) **Remission and suspension of sentences.**

(*a*) The Governor-General in Council or the Local Government may, under S. 402, Cr.P.C., 1898, remit or suspend wholly or in part without conditions, or upon conditions, the punishment to which any person may be sentenced. S. 401, Cr.P.C. 1898. **J**

(*b*) On the breach of any condition on which a sentence has been suspended or remitted the Governor-General in Council or the Local Government, as the case may be, may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer without warrant and remanded to undergo the unexpired portion of the sentence. S. 401 (2), Cr. P. C. 1898. **K**

Licensee to be allowed to go at large.

22. So long as any license granted under section 21, sub-section (1), continues in force and unrevoked, the licensee shall not be liable to imprisonment or penal servitude by reason of his sentence, but shall be allowed to go and remain at large according to the terms of the license.

Apprehension of convict where license revoked.

23. In case of the revocation of any such license as aforesaid, any Secretary to the Government of India may, by order in writing, signify to any Justice of the Peace or Magistrate that the license, has been revoked, and require him to issue a warrant for the arrest of the licensee, and such Justice or Magistrate shall issue his warrant accordingly.

Execution of warrant.

24. A warrant issued under section 23 may be executed by any officer to whom it is directed or delivered for that purpose in any part of British India, and shall have the same force in any place within British India as if it had been originally issued or subsequently endorsed by the Justice of the Peace or Magistrate or other authority having jurisdiction in the place where it is executed.

Licensee when arrested to be brought up for recommitment.

25. (1) When the licensee, for whose arrest a warrant has been issued under section 23, is arrested thereunder, he shall be brought, as soon as conveniently may be, before the Justice or Magistrate by whom the warrant was issued, or before some other Justice or Magistrate of the same place, or before a Justice or Magistrate having jurisdiction in the district in which the licensee has been arrested.

(2) Such Justice or Magistrate as aforesaid shall thereupon make out a warrant under his hand and seal for the recommitment of the licensee to the prison from which he was released under the license.

Recommitment.

26. When a warrant has been issued under section 25, sub-section (2), the licensee shall be recommitted accordingly, and shall thereupon be liable to be kept in penal servitude for such further term as, with the time during which he may have been imprisoned under the original sentence and the time during which he may have been at large under an unrevoked license, is equal to the term mentioned in the original sentence.

Penalty for breach of condition of the license.

27. If a license is granted under section 21 upon any condition specified therein, and the licensee—

(*a*) violates any condition so specified ; or

(*b*) goes beyond the limits so specified ; or

(*c*) knowing of the revocation of the license, neglects forthwith to surrender himself, or conceals himself, or endeavours to avoid arrest ;

he shall be liable upon conviction to be sentenced to penal servitude for a term not exceeding the full term of penal servitude mentioned in the original sentence.

PART VI.

REMOVAL OF PRISONERS.

References in this Part to prisons, etc., to be construed as referring also to Reformatory Schools.

28. In this Part, all references to prisons or to imprisonment or confinement shall be construed as referring also to Reformatory Schools or to detention therein.

Removal of prisoners.

29. (1) The Governor General in Council may, by general or special order, provide for the removal of any prisoner confined in a prison—

(*a*) under sentence of death, or

(*b*) under, or in lieu of, a sentence of imprisonment or transportation, or

(*c*) in default of payment of a fine, or

(*d*) in default of giving security for keeping the peace or for maintaining good behaviour,

to any other prison in British India.

(2) The Local Government and (subject to its orders and under its control) the Inspector General of Prisons may, in like manner, provide for the removal of any prisoner confined as aforesaid in a prison in the Province to any other prison in the Province.

Lunatic prisoners how to be dealt with.

30. (1) Where it appears to the Local Government that any person detained or imprisoned under any order or sentence of any Court is of unsound mind, the Local Government may, by a warrant setting forth the grounds of belief that the person is of unsound mind, order his removal to a lunatic asylum or other place of custody within the Province, there to be kept and treated as the Local Government directs during the remainder of the term for which he has been ordered or sentenced to be detained or imprisoned, or, if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be further detained under medical care or treatment, then until he is discharged according to law.

(2) Where it appears to the Local Government that the prisoner has become of sound mind, the Local Government shall, by a warrant directed to the person having charge of the prisoner, if still liable to be kept in custody, remand him to the prison from which he was removed, or to another prison within the Province, or, if the prisoner is no longer liable to be kept in custody, order him to be discharged.

(3) The provisions of section 9 of the Lunatic Asylums Act, 1858, shall apply to every person confined in a lunatic asylum under sub-section (1) after the expiration of the term for which he was ordered or sentenced to be detained or imprisoned; and the time during which a prisoner is confined in a lunatic asylum under that sub-section shall be reckoned as part of the term of detention or imprisonment which he may have been ordered or sentenced by the Court to undergo. XXXVI of 1858.

(4) In any case in which a Local Government is competent under sub-section (1) to order the removal of a prisoner to a lunatic asylum or other place of safe custody within the Province, the Governor General in Council may order his removal to any lunatic asylum or other place of safe custody in any part of British India; and the provisions of this section respecting the custody, detention, remand and discharge of a prisoner removed by order of a Local Government shall, so far as they can be made applicable, apply to a prisoner removed by order of the Governor General in Council.

(Note).

General.

N.B.—Ch. XXXIV of the Cr. P. C. 1898 lays down the procedure to be followed when the accused in an inquiry or trial appears to be a lunatic. But this section relates to the case of a person being found a lunatic when he is detained or imprisoned under an order or sentence of a Court. **L**

31. [*Removal of prisoners from territories under one Local Government to territories under another.*] *Rep. by the Repealing and Amending Act, 1903 (I of 1903).*

PART VII.

PERSONS UNDER SENTENCE OF TRANSPORTATION.

Appointment of places for confinement of persons under sentence of transportation and removal thereto.

32. The Governor General in Council may appoint places within British India to which persons under sentence of transportation shall be sent[1]; and the Local Government, or some officer duly authorized in this behalf by the Local Government, shall give orders for the removal of such persons to the places so appointed, except when sentence of transportation is passed on a person already undergoing transportation under a sentence previously passed for another offence.

(Notes).

1.—"The Governor-General in Council....sent."

Places appointed for transportation.

(1) All central jails in Bengal, and the Presidency jail at Calcutta (Gaz. of India, 1870, Pt. I, p. 50).

(2) The central jails at Rajamundry, Vellore, Salem, Coimbatore, Trichinopoly, Cannanore, the District Jail at Mangalore, the jail at Paumben, and the Penitentiary at Madras. (Gaz. of India, 1868, Pt .I, p. 959).

(3) The central jail at Lucknow. (Gaz. of India, 1893. Pt. I, p. 171).

(4) The central jails at Benares, Allahabad, Farruckabad and Bareilly. (Gaz. of India, 1893, Pt. I, p. 2).

(5) The jails at Delhi and Mooltan. (Gaz. of India, 1889, Pt. I, p. 339).

(6) The jail at Ahmadabad for females sentenced in Guzerat, and that of Thannah for females sentenced in the Presidency of Bombay. (Bom. Gaz. 1875, Pt. I, p. 754).

(7) The central jail at Rangoon and Moulmin. (Gaz of India, 1897, Pt. I, p. 320).

(8) The jails at Mandalay, Myingyan, Bassein, Thayetmyo. (*Ibid.*)

(9) The jail at Insein. (*Ibid.*)

(10) The Raipur jail. (Gaz. of India, 1891, Pt. I, p. 185).

(11) Yerrowda central jail in Bombay. (Gaz. of India, 1873, Pt. I, p. 732).

(12) Montgomery central jail. (Gaz. of India, 1894, Pt. I, p. 180).

24 & 25 Vic. c. 104.

(13) Umballa and Rawalpindi District jails. (Gaz. of India, 1895, Pt. I, p. 133). M

PART VIII.

DISCHARGE OF PRISONERS.

Realease, on recognizance by order of High Court, of prisoner recommended for pardon.

33. Any Court established under the Indian High Courts Act, 1861[1], may, in any case in which it has recommended to Her Majesty the granting of a free pardon to any prisoner, permit him to be at liberty on his own recognizance.

(Note).

1.—"Any Court....1861."

"Any Court established under the Indian High Courts Act, 1861," meaning of.

These are the chartered High Courts established by Letters Patent at Calcutta, Madras, Bombay and Allahabad. N

PART IX.

PROVISIONS FOR REQUIRING THE ATTENDANCE OF PRISONERS AND OBTAINING THEIR EVIDENCE.

Attendance of Prisoners in Court.

References in this Part to prisons, etc., to be construed as referring also to Reformatory Schools.

34. In this Part, all references to prisons, or to imprisonment or confinement shall be construed as referring also to Reformatory Schools or to detention therein.

Power for Civil Courts to require appearance of prisoner to give evidence.

35. Subject to the provisions of section 39, any Civil Court may, if it thinks that the evidence of any person confined in any prison within the local limits of its appellate jurisdiction, if it is a High Court, or, if it is not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, is material in any matter pending before it, make an order in the form set forth in the first schedule, directed to the officer in charge of the prison.

District Judge in certain cases to countersign orders made under section 35.

36. (1) Where an order under section 35 is made in any civil matter pending—

(*a*) in a Court subordinate to the District Judge, or

(*b*) in a Court of Small Causes outside a Presidency-town [1],

it shall not be forwarded to the officer to whom it is directed, or acted upon by him, until it has been submitted to, and countersigned by,—

(i) the District Judge to which the Court is subordinate, or

(ii) the District Judge within the local limits of whose jurisdiction the Court of Small Causes is situate.

(2) Every order submitted to the District Judge under subsection (1) shall be accompanied by a statement, under the hand of the Judge of the subordinate Court or Court of Small Causes, as the case may be, of the facts which in his opinion rendered the order necessary, and the District Judge may, after considering such statement, decline to countersign the order.

(Note).

1.—"In a Court of Small Causes....Presidency-town."

Power of Mofussil Small Cause Courts to require attendance of prisoners (Act VIII of 1859).

In 5 B.L.R. 215=13 W.R. 278, it was *held* that a Judge of a Small Cause Court in the mofussil could direct the jailer to bring up before the Court, at the hearing of the suit, a defendant committed to custody under S. 78 of the C.P.C., 1859, without having recourse to the procedure under the Prisoners' Testimony Act (XV of 1869). **O**

Power for certain Criminal Courts to require attendance of prisoner to give evidence or answer to charge.

37. Subject to the provisions of section 39, any Criminal Court may, if it thinks that the evidence of any person confined in any prison within the local limits of its appellate jurisdiction, if it is a High Court [1], or, if it is not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is

subordinate, is material in any matter pending before it, or if a charge of an offence against such person is made or pending, make an order in the form set forth in the first or second schedule, as the case may be, directed to the officer in charge of the prison:

Provided that if such Criminal Court is inferior to the Court of a Magistrate of the first class, the order shall be submitted to, and countersigned by, the District Magistrate to whose Court such Criminal Court is subordinate or within the local limits of whose jurisdiction such Criminal Court is situated.

(Note).

I.—"If it is a High Court."

Power of High Court to issue writs under S. 491, Cr.P.C.

Under S. 491, Cr.P.C., 1898, the High Courts at Madras, Bombay and Fort William, have power to issue directions of the nature of *Habeas Corpus*. But that section relates only to persons within the limits of the ordinary Original Civil jurisdiction of those Courts. P

Order to be transmitted through Magistrate of the district or sub-division in which person is confined.

38. Where any person, for whose attendance an order as in this Part provided is made, is confined in any district other than that in which the Court making or countersigning the order is situate, the order shall be sent by the Court by which it is made or countersigned to the District or Subdivisional Magistrate within the local limits of whose jurisdiction the person is confined, and that Magistrate shall cause it to be delivered to the officer in charge of the prison in which the person is confined.

Procedure where removal is desired of person confined in Presidency-town or more than one hundred miles from place where evidence is required.

39. (1) Where a person is confined in a prison within a Presidency-town or in a prison more than one hundred miles distant from the place where any Court, subordinate to a High Court, in which his evidence is required, is held, the Judge or presiding officer of the Court in which the evidence is so required, shall, if he thinks that such person should be removed under this Part for the purpose of giving evidence in such Court, and if the prison is within the local limits of the appellate jurisdiction of the High Court, to which such Court is subordinate, apply in writing to the High Court, and the High Court may, if it thinks fit, make an order in the form set forth in the first schedule, directed to the officer in charge of the prison.

(2) The High Court making an order under sub-section (1) shall send it to the District or Subdivisional Magistrate within the local limits of whose jurisdiction the person named therein is confined, or, in the case of a person confined in a prison within a Presidency-town, to the Commissioner of Police, and such Magistrate or Commissioner shall cause it to be delivered to the officer in charge of the prison in which the person is confined.

Persons confined beyond limits of appellate jurisdiction of High Court.

40. Where a person is confined in a prison beyond the local limits of the appellate jurisdiction of a High Court, any Judge of such Court may, if he thinks that such person should be removed under this Part for the purpose of answering a charge of an offence or of giving evidence in any criminal matter in such Court or in any Court subordinate thereto, apply in writing to the Local Government of the territories within which the prison is situate [1], and the Local Government may, if it thinks fit, direct that person be so removed, subject to such rules regulating the escort of prisoners as the Governor General in Council may prescribe.

(Notes).

1.—"To the Local Government....situate."

Kolhapur Durbar—Not a Local Government.

(*a*) Having regard to the definition of "Local Government" in the General Clauses Act, S. 3 (29) (noted under S. 6, *supra*) it has been held that the Kolhapur Durbar is not a Local Government within the meaning of this section. 7 Bom.L.R. 566=2 Cr.L.J. 504. **Q**

(*b*) The High Court of Bombay, therefore, refused to address a letter to the Government of Bombay under this section, requesting them to ask the Kolhapur Durbar to permit a prisoner who was in prison in that State to come out of jail to answer charges in a criminal proceeding pending against him in the British territory. 7 Bom.L.R. 566=2 Cr.L.J. 504.**R**

Prisoner to be brought up.

41. Upon delivery of any order under this Part to the officer in charge of the prison in which the person named therein is confined, that officer shall cause him to be taken to the Court in which his attendance is required, so as to be present in the Court at the time in such order mentioned, and shall cause him to be detained in custody in or near the Court until he has been examined or until the Judge or presiding officer of the Court authorizes him to be taken back to the prison in which he was confined.

Power to Government to exempt certain prisoners from operation of this Part.

42. The Governor General in Council or the Local Government may, by notification in the Gazette of India or the local official Gazette, as the case may be, direct that any person or any class of persons shall not be removed from the prison in which he or they may be confined ; and thereupon, and so long as such notification remains in force, the provisions of this Part other than those contained in sections 44 to 46, shall not apply to such person or class of persons.

Officer in charge of prison when to abstain from carrying out orders.

43. In any of the following cases, that is to say,—

(*a*) where the person named in any order made under section 35, section 37 or section 39 appears to be, from sickness or other infirmity, unfit to be removed, the officer in charge of a prison in which he is confined, shall apply to the District or Subdivisional Magistrate within the local limits of whose jurisdiction the prison is situate and if such Magistrate, by writing under his hand, declares himself to be of opinion that the person named in the order is, from sickness or other infirmity, unfit to be removed ; or

(*b*) where the person named in any such order is under committal for trial ; or

(*c*) where the person named in any such order is under a remand pending trial or pending a preliminary investigation ; or

(*d*) where the person named in any such order is in custody for the period which would expire before the expiration of the time required for removing him under this Part and for taking him back to the prison in which he is confined ;

the officer in charge of the prison shall abstain from carrying out the order, and shall send to the Court from which the order has been issued, a statement of the reason for so abstaining :

Provided that such officer as aforesaid shall not so abstain where—

(*i*) the order has been made under section 37 ; and

(*ii*) the person named in the order is confined under committal for trial, or under a remand pending trial or pending a preliminary investigation, and does not appear to be, from sickness or other infirmity, unfit to be removed; and

(*iii*) the place, where the evidence of the person named in the order is required, is not more than five miles distant from the prison in which he is confined.

Commissions for Examination of Prisoners.

Commissions for examination of prisoners.

44. In any of the following cases, that is to say,—

(*a*) where it appears to any Civil Court that the evidence of a person confined in any prison within the local limits of the appellate jurisdiction of such Court, if it is a High Court, or if it is not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, who, for any of the causes mentioned in section 42 or section 43, cannot be removed, is material in any matter pending before it; or

(*b*) where it appears to any such Court as aforesaid that the evidence of a person confined in any prison so situate and more than ten miles distant from the place at which such Court is held, is material in any such matter; or

(*c*) where the District Judge declines, under section 36, to countersign an order for removal;

the Court may, if it thinks fit, issue a commission, under the provisions of the Code of Civil Procedure, for the examination of the person in the prison in which he is confined. XIV of 1882.

(Note).

General.

N.B.—Order XXVI, rr. 1 to 8 of the Code of Civil Procedure (Act V of 1908) corresponding to Ss. 383 to 390 of the Code of 1882, contains provisions as to commissions to examine witnesses. These provisions are applicable to commissions issued under Ss. 44 & 45 of this Code, subject to the special provisions contained in S. 46, *infra*, as to how the commission is to be directed. **R1**

Commissions for examination of prisoners beyond limits of appellate jurisdiction of High Court.

45. Where it appears to a High Court that the evidence of a person confined in a prison beyond the local limits of its appellate jurisdiction is material in any civil matter pending before it or before any Court subordinate to it, the High Court may, if it thinks fit, issue a commission, under the provisions of the XIV of 1882. Code of Civil Procedure, for the examination of the person in the prison in which he is confined.

Commission how to be directed.

46. Every commission for the examination of a person issued under section 44 or 45 shall be directed to the District Judge within the local limits of whose jurisdiction the prison in which the person is confined is situate, and the District Judge shall commit the execution ofthe commission to the officer in charge of the prison, or to such other person as he may think fit.

Services of Process on Prisoners.

Process how served on prisoners.

47. When any process directed to any person confined in any prison is issued from any Criminal or Revenue Court, it may be served by exhibiting to the officer in charge of the prison the original of the process and depositing with him a copy thereof.

Process served to be transmitted at prisoner's request.

48. (1) Every officer in charge of a prison upon whom service is made under section 47 shall, as soon as may be, cause the copy of the process deposited with him to be shown and explained to the person to whom it is directed, and shall thereupon endorse upon the process and sign a certificate to the effect that such person as aforesaid is confined in the prison under his charge and has been shown and had explained to him a copy of the process.

(2) Such certificate as aforesaid shall be *prima facie* evidence of the service of the process [1], and, if the person to whom the process is directed, requests that the copy shown and explained to him be sent to any other person and provides the cost of sending it by post, the officer in charge of the prison shall cause it to be sent.

(Note).

1.—"Such certificate....process."

Court to take judicial notice of jailer's signature.

When a process is served on a prisoner in the manner provided by S. 47, *supra*, and the officer in charge of the prison has indorsed it in the manner required by this section, the Court would not require proof of the jailer's signature but would take judicial notice of it. 4 B.L.R.O.C. 151. S

Miscellaneous.

Application of Part in certain cases.

49. (1) For the purposes of this Part, the Courts of Small Causes established in the Presidency-towns and the Courts of Presidency Magistrates shall be deemed to be subordirate to the High Court of Judicature at Fort William, Madras or Bombay, as the case may be.

* * * *

Deposit of costs.

50. No order in any civil matter shall be made by a Court under any of the provisions of this Part until the amount of the costs and charges of the execution of such order (to be determined by the Court) is deposited in such Court:

Provided that, if upon any application for such order it appears to the Court to which the application is made, that the applicant has not sufficient means to meet the said costs and charges, the Court may pay the same out of any fund applicable to the contingent expenses of such Court, and every sum so expended may be recovered by the Government from any person ordered by the Court to pay the same, as if it were costs in a suit recoverable under the Code of Civil Procedure. XIV of 1882.

Power to make rules under this Part.

51. (1) The Local Government, and in cases arising under section 40, the Governor General in Council, may make rules.

(*a*) for regulating the escort of prisoners to and from Courts in which their attendance is required and for their custody during the period of such attendance;

(*b*) for regulating the amount to be allowed for the costs and charges of such escort; and

(*c*) for the guidance of officers in all other matters connected with the enforcement of this Part.

(2) All rules made under sub-section (1) shall be published in the local official Gazette or the Gazette of India, as the case may be, and shall, from the date of such publication, have the same force as if enacted by this Act.

Power to declare who shall be deemed officer in charge of prison.

52. The Local Government may declare what officer shall, for the purposes of this Part, be deemed to be the officer in charge of a prison.

Repeals.

53. The enactments mentioned in the third schedule are hereby repealed to the extent specified in the last column thereof.

THE FIRST SCHEDULE.

(*See sections 35 and 37.*)

Court of .

To the officer in charge of the (*state name of prison*).

You are hereby required to produce , now a prisoner in , under safe and sure conduct before the Court of at on the day of next by of the clock in the forenoon of the same day, there to give evidence in a matter now pending before the said Court, and after the said has then and there given his evidence before the said Court or the said Court has dispensed with his further attendance, cause him to be conveyed under safe and sure conduct back to the prison.

The day of .

A. B.

(Countersigned) *C. D.*

THE SECOND SCHEDULE.

(*See section 37.*)

Court of .

To the officer in charge of the (*state name of prison*).

You are hereby required to produce , now a prisoner in , under safe and sure conduct before the Court of at on the day of next by of the clock in the forenoon of the same day, there to answer a charge now pending before the said Court, and after such charge has been disposed of or the said Court has dispensed with his further attendance, cause him to be conveyed under safe and sure conduct back to the said prison.

The day of .

A. B.

(Countersigned) *C. D.*

THE THIRD SCHEDULE.

(*See section 53.*)

Year.	No.	Title.	Extent of repeal.
1869	XV	The Prisoners' Testimony Act, 1869	The whole Act.
1871	V	The Prisoners Act, 1871.	The whole Act, except section 15
1882	IX	The Prisoners Act Amendment Act, 1882.	The whole Act.
1886	X	The Indian Criminal Law Amendment Act, 1886.	Section 25.
1889	*XI*	*The Lower Burma Courts Act, 1889.*	*Section 98.*
1891	XII	The Repealing and Amending Act, 1891.	So much as relates to Act V of 1871.
1893	V	The Foreign Jurisdiction (Capital Sentences) Act, 1893.	The whole Act.
1894	VII	The Prisoners Act (1871) Amendment Act, 1894.	The whole Act.
1897	VIII	The Reformatory Schools Act, 1897.	Section 30.

APPENDIX.

The Prisoners Act V of 1871.

Warrants under Regulations for confinement of State prisoners.

15. Any warrant of commitment under Regulation III of 1818 of the Bengal Code (*for the Confinement of State Prisoners*), Regulation II of 1819 of the Madras Code (*for the Confinement of State Prisoners*), and Regulation XXV of 1827 of the Bombay Code (*for the Confinement of State Prisoners, and for the Attachment of the Lands of Chieftains and others, for Reasons of State*), may be directed to the Superintendent in the same manner as the same might have been directed to the Sheriff under Act No. XXXIV of 1850 (*for the better Custody of State Prisoners*), and Act No. III of 1858 (*to amend the Law relating to the arrest and detention of State Prisoners*).

N.B.—The whole of the Prisoners Act V of 1871, with the exception of S. 15 has been repealed by the Prisoners Act III of 1900.

THE PRISONERS ACT, 1900.

TABLE OF CASES NOTED IN THIS ACT.

		PAGE
	I. L. R. Calcutta Series.	
23 C 563 ...	Norendra Nath Sircar v. Kamal Basini Dasi ...	7
24 C 406 ...	Lala Ramjewan Lal v. Dal Koer ...	7
27 C 457 ...	Durga Charan Jemadar v. Queen-Empress ...	10
31 C 1 ...	Emperor v. Jogeshwar Passi ...	13
	I. L. R. Madras Series.	
26 M 494 ...	Kochappa v. Sachidevi ...	12
	Bombay Law Reporter.	
7 Bom L R 566 ...	Emperor v. Raje Sahib Imam Saheb ...	25
	Calcutta Weekly Notes.	
4 C W N 822 ...	Durga Jemadar v. Guna Nath ...	10
6 C W N 254 (261)..	*In the matter of,* Horace Lyall v. The King-Emperor ...	9, 10, 12
7 C W N 889 ...	Emperor v. Jogessur Parsi ...	13
	Bengal Law Reports.	
4 B L R O C 51* ...	Tamor Sing v. Kalidas Roy ...	29
5 B L R 215 ...	Kilaram Maji v. Narayan Das ...	23
	Sutherland's Weekly Reporter.	
13 W R 278 ...	Kelaram Majee v. Narain Dass ...	23
	Indian Appeals.	
23 I A 18 (P C) ...	Norendra Nath Sircar v. Kamal Basini Dasi ...	7
	The Criminal Law Journal.	
2 Cr L J 504 ...	Emperor v. Raje Saheb Imam Saheb ...	25
	English Cases.	
(1891) App Cas 144 ...	Bank of England v. Vagliano ...	7
(1894) 2 Ch 557 ...	Budgett, *Re* ...	7
25 Q B D 182 ...	Mitchell v. Simpson ...	7

* In the book it is wrongly printed as 151.

THE PRISONERS ACT, 1900.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this volume and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S in Brevier Roman denotes the section.

A

Act, commencement of the, S. 1, **7**.

Extent of the, S. 1, **7**.

Act IV of 1871 (Coroners Act), where in force, *C*, **8**.

Act V of 1899, Abolition of the office of Coroner in Madras, *C*, **8**.

Alter, power to revoke license granted under S. 21 (1), S. 21 (2), **18**.

Appearance, of prisoner to give evidence, S. 35, **23**; S. 37, **23**.

Power of Mofussil Small Cause Courts to require, of prisoners, *O*, **23**.

Appointment, of places for confinements, S. 32, **22**.

Apprehension, of convict where license granted to go at large is revoked, S. 23, **18**.

Arrest, by process serving peon, *P*, **10**.

Warrant of, where may be executed, *Q*, **10**.

Delivery of persons arrested in pursuance of warrant of High Court, S. 13 (1), **14**.

——————————————— of Civil Court in Presidency town, (*Ibid.*).

Licensee when arrested to be brought up for re-commitment, S. 25 (1), **19**.

See WARRANT.

Attendance, of prisoners in Court, Ss. 34—43, **22—27**.

Authority, warrant of officer of Court mentioned in S. 15 to be sufficient, for holding persons in confinement, S. 16, **16**.

B

Breach, see LICENSE.

British Baluchistan, extension of Act to, S. 1, **7**.

British Court, What is a, for the purpose of S. 18, S. 18 (3), **17**.

British India, meaning of, *B*, **7**.

See CAPITAL SENTENCES.

C

Capital sentences, execution in British India of, not ordinarily executable there, S. 18, **16**.

Charge, requiring attendance of prisoner to answer to, S. 37, **23**, **24**.

See HIGH COURT.

Civil, any officer exercising, jurisdiction is a Court, S. 2, **8**.

Civil Courts, delivery of persons arrested in pursuance of warrant of, S. 13 (1), **14**.
Power of, to require appearance of prisoner to give evidence, S. 35, **23**.

Codification, interpretation of, law, *A*, **7**.

Commissions, provisions in Civ. Pro. Code as to, to examine witnesses to be applicable to this Act, *R*, **27**.

For examination of prisoners when may be issued, S. 44, **27**.

For examination of prisoners beyond limits of appellate jurisdiction of High Court, S. 45, **28**.

For examination of prisoners how to be directed, S. 46, **28**.

Commitment, by Magistrates, *B*, **13**.
by Coroner, *D*, **13**.

Presidency Magistrate's jurisdiction not ousted by Coroner's, *E*, **13**.

See DELIVERY.

Committal, to prison for failure to give security for good behaviour, S. 10, **12**.

Condition, penalty for breach of, of license, S. 27, **19**.

Confinement, reference to when to be construed as referring also to Reformatory, Schools, S. 14, **14**.

What is sufficient authority for holding any person in, S. 16, **16**.

References in Part VI to, to be construed as referring also to Reformatory Schools, S. 28, **20**.

Reference in Pt. IX to, to be construed as referring also to Reformatory Schools, S. 34, **22**.

Consolidation, interpretation of. Act, *A*, **7**.

Construction, reference in Pt. IV to prisons etc., to be construed as referring to Reformatory Schools, S. 14, **14**.

Contempt of Court, delivery of persons committed by High Court for, S. 9, **12**.

Courts competent to commit for, *Z*, *A*, **12**.

Convict, see APPREHENSION.

Coroner, court includes, S. 2, **8**.

Coroner's Act, see ACT IV OF 1871.

Costs, deposit of, S. 50, **29**.

Court, definition of, S. 2, **8**.

Established under the Indian High Courts Act, 1861—Meaning, *N*, **22**.

Courts, power of officers in charge of prisons to give effect to sentence of certain, S. 15 (1), **15**.

Criminal, Any officer exercising, jurisdiction is a Court, S. 2, **8**.

See JURISDICTION.

Criminal Courts, power for, to require attendance of prisoners to give evidence or answer to charge, S. 37, **23**, **24**.

Crim. Pro. Code, S. 307—Confinement of persons sentenced on reference under, *Y*, **12**.

Custody, pending hearing by High Court of application for insolvency, S. 12, **13**.

D

Death, Sentence by Sessions Court not executable until confirmed, S. **11**.

See DELIVERY.

See REMOVAL.

Decree, Delivery of persons committed by High Court in execution of, S. 9, **12.**

Delivery, of persons sentenced to imprisonment or death by High Court, S. 7, **10.**

of persons sentenced to transportation or penal servitude by High Court, S. 8, **11.**

of persons committed by High Court in execution of decree or for contempt of Court, S. 9, **12.**

of persons sentenced by Presidency Magistrate, S. 10, **12.**

of persons committed for trial by High Court, S. 11, **12.**

of persons arrested in pursuance of warrant of High Court, S. 13 (1), **14.**

of Civil Court in Presidency town, S. 13 (1), **14.**

Deposit, of costs, S. 50, **29.**

Detain, See OFFICERS.

Detention, officers in charge of prisons outside Presidency towns may order warrant for, of persons passed by certain Courts, S. 15 (1), **15.**

Discharge, of prisoners, S. 33, **22.**

Doubt, See PROCEDURE.

E

Enactments, respecting persons under sentence of transportation applied to persons under sentence of penal servitude, S. 20, **17.**

Evidence, Power of Civil Courts to require appearance of prisoner to give, S 35, **23.**

Procedure where removal is desired of person confined in Presidency town or more than 100 miles from Court, S. 39, **24, 25.**

See HIGH COURT.

Examination, of prisoners on commissions, Ss. 44—46, **27, 28.**

Execution, in British India of certain capital sentences not ordinarily executable there, S. 18, **16.**

See PROCEDURE.

Exemption, Power of Government to exempt certain prisoners from being removed from the prison, S. 42, **26.**

F

Form, of writs and warrants of High Court, *G*, **9.**

G

Good behaviour, See SECURITY.

H

High Court, Writ or warrant issued by, to be directed to Police Officers, S. 5, **9.**

Meaning of, *F*, **9.**

Form of writs and warrants of, *G*, **9.**

Custody pending hearing by, of application for insolvency, S. 12, **13.**

Power of, to issue writs under, S. 491, Cr. P. C. **24.**

Removal of persons confined beyond limits of appellate jurisdiction of High Court for giving evidence or answering a charge, S. 40, **25.**

See COMMISSIONS.

See COURT.

See DELIVERY.

See JURISDICTION.

I

Imprisonment, Reference to, when to be construed as referring also to Reformatory Schools, S. 14, **14.**

Time of intermediate, of a person under sentence of penal servitude, S. 19 (2), **17,**

Enactments respecting persons under sentence of, applied to persons under sentence of penal servitude, S. 20, **17.**

References in Part VI to, to be construed as referring also to Reformatory Schools, S. 28, **20,**

Reference in Pt. IX to, to be construed as referring also to Reformatory Schools, S. 34, **22.**

See DELIVERY.

See REMOVAL.

Indian High Courts Act 1861, Any Court established under the—Meaning, *N*, **22.**

Insolvency, Custody pending hearing of application for, S. 12, **13.**

Interpretation, of consolidating and codifying laws, *A*, **7.**

J

Jail, Place declared to be a subsidiary, is prison, S. 2, **8.**

Jurisdiction, Extent of High Court's ordinary criminal, *H*, **9.**

Extent of extraordinary criminal, *I*, **9.**

Extent of other criminal, meaning of, *J*, *K*, **9.**

See COMMITMENT.

Justice of the peace, Commitment by, to High Court, S. 11, **12.**

Who can be appointed, *C*, **13.**

Revocation of license to be addressed to, S. 23, **18.**

K

Kolhapur Durbar, Not a local Government, *Q*, *R*, **25.**

L

Legality, Procedure where officer in charge of prison doubts the, of warrant sent to him for execution, S 17 (1), **16.**

License, to be at large within British India, S. 21 (1), **18.**

Power to grant, to person sentenced to penal servitude, S. 21 (1), **18.**

Power to alter or revoke license granted under, S. 21 (1), S. 21 (2), **18.**

under S. 21 (1) to be allowed to go at large, S. 22, **18.**

Apprehension of convict where, revoked, S. 23, **18.**

Revocation of, to whom to be signified, S. 23, **18.**

When arrested to be brought up for recommitment, S. 25, **19.**

Penalty for breach of condition of license, S. 27, **19.**

See WARRANT.

Local Government, Power of, to appoint Superintendent of prisons, S. 6, **10.**

Meaning of, *R*, **10.**

Kolhapur Durbar not a, *Q*, *R*, **25.**

Lunatic prisoners, How to be dealt with, S. 30, **20, 21.**

M

Magistrate, Revocation of license to be addressed to, S. 23, **18.**

O

Officer in charge of prison, Power to declare who shall be deemed, S. 52, **30.**

Officers, in charge of prisons to detain persons duly committed to their custody, S. 3, **8.**

in charge of prisons to return writs etc., after execution or discharge, S. 4, **8.**

Powers of, in charge of prisons to give effect to sentences of certain Courts, S. 15 (1), **15.**

Order, Return of, after execution or discharge, S. 4, **8.**

Requiring attendance of prisoner in Court through whom should be sent, S. 36, **23**; S. 38, **24.**

P

Pardon, Release of prisoner recommended for, S. 33, **22.**

Penal servitude, when to be imposed, *W*, **11.**

Persons under sentence of, how to be dealt with, S. 19 (1), **17.**

Power to grant license to person sentenced to, S. 21 (1), **18.**

See DELIVERY.

See ENACTMENTS.

Penalty, for breach of conditions of the license, S. 27, **19.**

Places, appointed for transportation, *M*, **22.**

Places for confinement, Appointment of, of persons under sentence of transportation and removal thereto, S. 32, **21.**

Police officers, Writ or warrant issued by High Court to be directed to, S. 5, **9.**

Warrant to more, than one, *L—N*, **10.**

Presidency, See PRISONS.

Presidency Magistrate, Delivery of persons sentenced by, S. 10, **12.**

Presidency-town, Meaning of, *E*, **9.**

Prisoners in, Pt. III, **9—14.**

Prisoners outside the, Pt. IV, **14—17.**

Procedure where removal is desired of person confined in, for giving evidence, S. 39, **24, 25.**

Prison, Definition of, S. 2, **8.**

Prisoner, Appearance of, to give evidence, S. 35. **23**; S. 37, **23.**

Whose attendance was required to give evidence or to answer to charge to be brought up, S. 41, **25.**

Prisoners, in the Presidency towns Pt. III, **9—14.**

Outside the Presidency towns Pt. IV, **14—17.**

Removal of, Pt. VI, **20, 21.**

Discharge of, S. 33, **22.**

Examination of, on commissions, Ss. 44—46, **27, 28.**

Prisons, Officers in charge of, to detain persons duly committed to their custody, S. 3, **8.**

Officers in charge of, to return writs etc., after execution or discharge, S. 4, **8**

Appointment of Superintendent of Presidency, S. 6, **10.**

Reference to, when to be construed as referring also to Reformatory Schools, S. 14, **14.**

Prisons –(Concluded).

References in Part VI to, to be construed as referring also to Reformatory Schools, S. 28, **20.**

Reference in Pt. IX to, to be construed as referring also to Reformatory Schools, S. 34, **22.**

See OFFICERS.

Procedure, Where officer in charge of prison doubts the legality of warrant sent to him for execution under Pt. IV, S. 17 (1), **16.**

See ORDER, EVIDENCE.

Process, How served on prisoners, S. 47, **28.**

Served to be transmitted at prisoner's request, S. 48, **28.**

R

Recognisance, Release on, of Prisoner recommended for pardon, S. 33, **22.**

Recommitment, After issue of warrant issued under, S. 25—S. 26, **19.**

See ARREST.

Reformatory schools, Reference in Pt. IV to prisons etc., to be construed as referring to Reformatory Schools, S. 14, **14.**

See PRISONS, IMPRISONMENT, CONFINEMENT.

Release, On recognisance by order of High Court, of prisoners recommended for pardon, S. 33, **22.**

Remission, of sentences, *J*, *K*, **18.**

Removal, Time of, from one prison to another of a person under sentence of penal servitude, S. 19 (2), **17.**

Of prisoners confined under sentence of death, S. 29 (*a*), **20.**

Of prisoners confined under sentence of imprisonment or transportation, S. 29 (*b*), **20.**

Of prisoners confined in default of fine, S. 29 (*c*), **20.**

Of prisoners confined in default of giving security, S. 29 (*d*), **20.**

Of prisoners, Pt. VI, **20, 21.**

Of prisoners to places for confinement appointed, S. 32, **21.**

Officer in charge of prison when to abstain from carrying out orders for, of prisoners, S. 43, **26, 27.**

Return, of writs etc., after execution or discharge, S. 4, **8.**

of warrant on execution of sentence, *D*, **8.**

Revenue, Any officer exercising, jurisdiction is a Court, S. 2, **8.**

Revocation, Of license to whom to be signified, S. 23, **18.**

Revoke, Power to revoke license granted under S. 21 (1), S. 21 (2), **18.**

Apprehension of convict where license revoked, S. 23, **18.**

Rules, Power of local government to make, under Pt. IX, S. 51, **29, 30.**

S

Santhal Parganas, Extension of Act to, S. 1, **7.**

Security, Committal to prison for failure to give security to keep peace or to be of good behaviour, S. 10, **12.**

Sentence, Commutation of sentences, *I*, **18**.
Remission and suspension of sentences, *J*, *K*, **18**.
See COURTS.
See ENACTMENTS.
See PENAL SERVITUDE, TRANSPORTATION, IMPRISONMENT.
See REMOVAL.
Service, Of process on prisoners, Ss. 47, 48, **28**.
Of process on prisoner—Court to take judicial notice of jailor's signature, *S*, **29**.
Small Cause Court, Power of Mofussil, to require attendance of prisoners, *O*, **23**.
Spiti, Extention of Act to the Pargana of, S. 1, **7**.
Superintendent, Power of Local Government to appoint, of Presidency prisons, S. 6, **10**.
Suspension, of sentences, *J*, *K*, **18**.

T

Transportation, Sentence of, not to specify place of, *U*, **11**.
Offenders sentenced to, how dealt with until transported, *V*, **11**.
Sufficient authority for sending any person for, S. 16, **16**.
Enactments respecting persons under sentence of, applied to persons under sentence of penal servitude, S. 20, **17**.
Persons sentenced to, how dealt with, *H*, **17**.
Places appointed for, *M*, **22**.
See DELIVERY.
See REMOVAL.

W

Warrant, Return of, on execution of sentence, *D*, **8**.
issued by High Court to be directed to Police-Officers, S. 5, **9**.
Form of, issued by High Court, *G*, **9**.
to more Police Officers than one, *L*—*N*, **10**.
Execution of, by endorsee, *O*, **10**.
to whom to be addressed, *T*, **11**.
of officer of Court mentioned in S. 15 to be sufficient authority for holding persons in confinement, S. 16, **16**.
For the arrest of licensee when shall be required to issue, S. 23, **18**.
Issued under S. 23 to be executed by whom, S. 24 **19**.
See DETENTION.
See PROCEDURE.
Writ, Return of, after execution or discharge, S. 4, **8**.
issued by High Court to be directed to police-officers, S. 5, **9**.
Form of, issued by High Court, *G*, **9**.

THE LAWYER'S COMPANION SERIES.

THE PRISONS ACT, 1894

(ACT IX OF 1894).

(WITH THE CASE-LAW THEREON)

BY

T. V. SANJIVA ROW,

FIRST GRADE PLEADER, TRICHINOPOLY.

(AUTHOR OF A "DIGEST OF PRIVY COUNCIL RULINGS,"
THE "CURRENT INDEX OF INDIAN CASES,"
THE "LAWYER'S COMPANION,"
AND
THE "INDIAN EVIDENCE ACT.")

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THE PRISONS ACT, 1894.

TABLE OF CASES DIGESTED IN THIS ACT.

		PAGE
	I.L.R. Allahabad Series.	
2 A 301	... Empress of India v. Lalai ...	9
	North-West Provinces High Court Reports.	
4 N W P 4	... The Queen v. Sheoumber Lal ...	27
	Allahabad Weekly Notes.	
A W N 1900, p. 183.	Queen Empress v. Jagannath ...	26
	Ratanlal's Unreported Criminal Cases.	
Rat Unrep Cr Cas 278	... Queen Empress v. Radha ...	44

THE PRISONS ACT, 1894.

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Title, extent and commencement.
2. Repeal.
3. Definitions.

CHAPTER II.

MAINTENANCE AND OFFICERS OF PRISONS.

4. Accommodation for prisoners.
5. Inspector General.
6. Officers of prisons.
7. Temporary accommodation for prisoners.

CHAPTER III.

DUTIES OF OFFICERS.

Generally.

8. Control and duties of officers of prisons.
9. Officers not to have business dealings with prisoners.
10. Officers not to be interested in prison-contracts.

Superintendent.

11. Superintendent.
12. Records to be kept by Superintendent.

Medical Officer.

13. Duties of Medical Officer.
14. Medical Officer to report in certain cases.
15. Report on death of prisoner.

Jailer.

16. Jailer.
17. Jailer to give notice of death of prisoner.
18. Responsibility of Jailer.
19. Jailer to be present at night.
20. Powers of Deputy and Assistant Jailers.

Subordinate Officers.

SECTIONS.

21. Duties of gate-keeper.
22. Subordinate officers not to be absent without leave.
23. Convict officers.

CHAPTER IV.

ADMISSION, REMOVAL AND DISCHARGE OF PRISONERS.

24. Prisoners to be examined on admission.
25. Effects of prisoners.
26. Removal and discharge of prisoners.

CHAPTER V.

DISCIPLINE OF PRISONERS.

27. Separation of prisoners.
28. Association and segregation of prisoners.
29. Solitary confinement.
30. Prisoners under sentence of death.

CHAPTER VI.

FOOD, CLOTHING AND BEDDING OF CIVIL AND UNCONVICTED CRIMINAL PRISONERS.

31. Maintenance of certain prisoners from private sources.
32. Restriction on transfer of food and clothing between certain prisoners.
33. Supply of clothing and bedding to civil and unconvicted criminal prisoners.

CHAPTER VII.

EMPLOYMENT OF PRISONERS.

34. Employment of civil prisoners.
35. Employment of criminal prisoners.
36. Employment of criminal prisoners sentenced to simple imprisonment.

CHAPTER VIII.

HEALTH OF PRISONERS.

37. Sick prisoners.
38. Record of directions of Medical Officers.
39. Hospital.

CHAPTER IX.

VISITS TO PRISONERS.

SECTIONS.

40. Visits to civil and unconvicted criminal prisoners.
41. Search of visitors.

CHAPTER X.

OFFENCES IN RELATION TO PRISONS.

42. Penalty for introduction or removal of prohibited articles into or from prison and communication with prisoners.
43. Power to arrest for offence under section 42.
44. Publication of penalties.

CHAPTER XI.

PRISON-OFFENCES.

45. Prison-offences.
46. Punishment of such offences.
47. Plurality of punishments under section 46.
48. Award of punishments under sections 46 and 47.
49. Punishments to be in accordance with foregoing sections.
50. Medical Officer to certify to fitness of prisoners for punishment.
51. Entries in punishment-book.
52. Procedure on committal of heinous offence.
53. Whipping.
54. Offences by prison-subordinates.

CHAPTER XII.

MISCELLANEOUS.

55. Extramural custody, control and employment of prisoners.
56. Confinement in irons.
57. Confinement of prisoners under sentence of transportation in irons.
58. Prisoners not to be ironed by Jailer except under necessity.
59. Power to make rules.
60. Power to Local Government to make rules.
61. Exhibition of copies of rules.
62. Exercise of powers of Superintendent and Medical Officer.

THE SCHEDULE.

Enactments repealed.

THE PRISONS ACT, 1894.

ACT No. IX OF 1894.

(*22nd March, 1894.*)

An Act to amend the law relating to Prisons.

WHEREAS it is expedient to amend the law relating to prisons in British India, and to provide rules for the regulation of such prisons ; It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Title, extent and commencement.

1. (1) This Act may be called the Prisons Act, 1894.

(2) It extends [1] to the whole of British India, inclusive of * * * British Baluchistan, the Sonthal Parganas and the Pargana of Spiti ; and

(3) It shall come into force on the first day of July 1894.

(4) Nothing in this Act shall apply to civil jails in the Presidency of Bombay outside the city of Bombay, and those jails shall continue to be administered under the provisions of sections 9 to 16 (both inclusive) of Bombay Act II of 1874 [2], as amended by subsequent enactments.

(Notes).

1.—"Extends."

(1) **Upper Burma.**

The Act was declared in force in -, by the Burma Laws Act, 1898 (XIII of 1898). **A**

(2) **Sonthal Parganas.**

The Act was declared in force in the—, See Reg. III of 1872, S. 3, as amended by S. 3, Reg. III of 1899. **B**

(3) **District of Angul.**

The Act has been declared, by notifications under S. 5 of the Angul District Regulation 1894 (I of 1894), to be in force in the—. See Cal. Gaz. 1901, Pt. I, p. 1534. **C**

2.—"Bombay Act II of 1874."

Provisions of Ss. 9—16, of Bombay Act II of 1874.

For the—See Appendix. **D**

Repeal.

2. (1) On and after the said first day of July, 1894, the enactments mentioned in the schedule shall be repealed to the extent specified in the fourth column thereof.

(2) But all rules and appointments made, directions given and orders issued under any of those enactments shall, so far as they are consistent with this Act, be deemed to have been respectively made, given and issued under this Act.

(3) Any enactment or document referring to any of those enactments shall, so far as may be, be construed to refer to this Act or to the corresponding portion thereof.

(Notes).

"Rules."

(1) **Rules for the management and superintendence of jails—Madras.**

For—rules for the management and superintendence of jails in the Madras Presidency, see list of Local Rules and Orders, Ed. 1903, Vol. I, p. 162 and also see *Ibid.* for notification prescribing a New Jail Code. **E**

(2) **Rules made by the Bombay Government.**

For—for the classification and treatment of prisoners under Bombay Act II of 1874 which is saved by the section, see Bombay Local Rules and Orders, Ed. 1897, Vol. I. pp. CXLIX & CLIV. **F**

Definitions.

3. In this Act—

(1) "prison [1]" means any jail or place used permanently or temporarily under the general or special orders of a Local Government for the detention of prisoners, and includes all lands and buildings appurtenant thereto, but does not include—

(*a*) any place for the confinement of prisoners who are exclusively in the custody of the police;

(*b*) any place specially appointed by the Local Government under S. 541 of the Code of Criminal Procedure, 1882 [2]; or

X of 1882.

(*c*) any place which has been declared by the Local Government, by general or special order, to be a subsidiary jail;

(2) "criminal prisoner" means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of a Court-martial:

(3) "convicted criminal prisoner" means any criminal prisoner under sentence of a Court or Court-martial, and includes a person detained in prison under the provisions of Chap. VIII of the Code of Criminal Procedure, 1882[2], or under the Prisoners' Act, 1871 : X of 1882 V of 1871

(4) "civil prisoner" means any prisoner who is not a criminal prisoner ;

(5) "remission system" means the rules for the time being in force regulating the award of marks to, and the consequent shortening of sentences of, prisoners in jails ;

(6) "history-ticket" means the ticket exhibiting such information as is required in respect of each prisoner by this Act or the rules thereunder ;

(7) "Inspector General" means the Inspector General of Prisons :

(8) "Medical Subordinate" means an Assistant Surgeon, Apothecary or qualified Hospital Assistant ; and

(9) "prohibited article" means an article the introduction or removal of which into or out of a prison is prohibited by any rule under this Act.

(Notes).

1.—"Prison."

(1) **Havalat, whether a prison.**

A havalat or lock-up in which prisoners under trial are confined, is a prison within the meaning of that term in this section, 2 A. 301. But see 1 Burma Select Judgments. 596. **G**

(2) **Lock-up.**

A—is not a prison within the meaning of Act XXVI of 1870. 1 Burma Select Judgments 596. **H**

2.—"Code of Criminal Procedure, 1882."

New Code of Criminal Procedure, 1898 (Act V of 1898). **I**

CHAPTER II.

MAINTENANCE AND OFFICERS OF PRISONS.

Accommodation for prisoners.

4. The Local Government shall provide, for the prisoners in the territories under such Government, accommodation in prisons constructed and regulated in such manner as to comply with the requisitions of this Act in respect of the separation of prisoners.

Inspector General [1].

5. An Inspector General shall be appointed for the territories subject to each Local Government, and shall exercise, subject to the orders of the Local Government, the general control and superintendence of all prisons situated in the territories under such Government.

(Notes).

1.—"Inspector General."

Notification.

For—appointing an Inspector-General for the N.W.F.P. See Gazette of India 1901, Pt. II, p. 1305, and for Coorg, see Coorg R. & O. (List). **J**

Officers of prisons.

6. For every prison there shall be a Superintendent, a Medical Officer (who may also be the Superintendent), a Medical Subordinate, a Jailer and such other officers as the Local Government thinks necessary :

Provided that the Governor of Bombay in Council may, with the previous sanction of the Governor General in Council, declare by order in writing that in any prison specified in the order the office of Jailer shall be held by the person appointed to be Superintendent.

Temporary accommodation for prisoners.

7. Whenever it appears to the Inspector General that the number of prisoners in any prison is greater than can conveniently or safely be kept therein, and it is not convenient to transfer the excess number to some other prison,

or whenever from the outbreak of epidemic disease within any prison, or for any other reason, it is desirable to provide for the temporary shelter and safe custody of any prisoners,

provision shall be made, by such officer and in such manner as the Local Government may direct, for the shelter and safe custody in temporary prisons of so many of the prisoners as cannot be conveniently or safely kept in the prison.

CHAPTER III.

DUTIES OF OFFICERS.

Generally.

Control and duties of officers of prisons.

8. All officers of a prison shall obey the directions of the Superintendent ; all officers subordinate to the Jailer shall perform such duties as may be imposed on them by the Jailer with the sanction of the Superintendent or be prescribed by rules under S. 60.

Officers not to have business dealings with prisoners.

9. No officer of a prison shall sell or let, nor shall any person in trust for or employed by him sell or let, or derive any benefit from selling or letting, any article to any prisoner or have any money or other business dealings directly or indirectly with any prisoner.

Officers not to be interested in prison-contracts.

10. No officer of a prison shall, nor shall any person in trust for or employed by him, have any interest, direct or indirect, in any contract for the supply of the prison: nor shall he derive any benefit, directly or indirectly, from the sale or purchase of any article on behalf of the prison or belonging to a prisoner.

Superintendent.

Superintendent.

11. (1) Subject to the orders of the Inspector General the Superintendent shall manage the prison in all matters relating to discipline, labour, expenditure, punishment and control.

(2) Subject to such general or special directions as may be given by the Local Government, the Superintendent of a prison other than a central prison or a prison situated in a Presidency-town shall obey all orders not inconsistent with this Act or any rule thereunder which may be given respecting the prison by the District Magistrate, and shall report to the Inspector-General all such orders and the action taken thereon.

Records to be kept by Superintendent.

12. The Superintendent shall keep, or cause to be kept, the following records :—

(1) a register of prisoners admitted ;

(2) a book showing when each prisoner is to be released ;

(3) a punishment-book for the entry of the punishments inflicted on prisoners for prison-offences ;

(4) a visitors' book for the entry of any observations made by the visitors touching any matters connected with the administration of the prison ;

(5) a record of the money and other articles taken from prisoners; and all such other records as may be prescribed by rules under S. 59 or S. 60.

Medical Officer.

Duties of Medical Officer.

13. Subject to the control of the Superintendent, the Medical Officer shall have charge of the sanitary administration of the prison, and shall perform such duties[1] as may be prescribed by rules made by the Local Government under section 60.

(Notes).

1.—"Such duties."

Rules as to Medical officer's duties under this section.

(*a*) For—in the United Provinces of Agra and Oudh, see United Provinces List of Local Rules and Orders, Vol. I. **K**

(*b*) For—in the Central Provinces—, see the Central Provinces Local Rules and Orders. **L**

Medical officer to report in certain cases.

14. Whenever the Medical Officer has reason to believe that the mind of a prisoner is, or is likely to be, injuriously affected by the discipline or treatment to which he is subjected, the Medical Officer shall report the case in writing to the Superintendent, together with such observations as he may think proper.

This report, with the orders of the Superintendent thereon, shall forthwith be sent to the Inspector General for information.

Report on death of prisoner.

15. On the death of any prisoner, the Medical Officer shall forthwith record in a register the following particulars, so far as they can be ascertained, namely:—

(1) the day on which the deceased first complained of illness or was observed to be ill,

(2) the labour, if any, on which he was engaged on that day,

(3) the scale of his diet on that day,

(4) the day on which he was admitted to hospital,

(5) the day on which the Medical Officer was first informed of the illness,

(6) the nature of the disease,

(7) when the deceased was last seen before his death by the Medical Officer or Medical Subordinate,

(8) when the prisoner died, and

(9) (in cases where a *post-mortem* examination is made) an account of the appearances after death,

together with any special remarks that appear to the Medical Officer to be required.

Jailer.

Jailer.

16. (1) The Jailer shall reside in the prison, unless the Superintendent permits him in writing to reside elsewhere.

(2) The Jailer shall not, without the Inspector General's sanction in writing, be concerned in any other employment.

Jailer to give notice of death of prisoner.

17. Upon the death [1] of a prisoner, the Jailer shall give immediate notice thereof to the Superintendent and the Medical Subordinate.

(Notes).

1.—"Death."

Coroner to be sent for when prisoner dies.

Whenever a prisoner dies in a prison situate within the place for which a Coroner is so appointed, the Superintendent of the prison shall send for the Coroner before the body is buried. Any Superintendent failing herein shall, on conviction before a Magistrate, be punished with fine not exceeding five hundred rupees.

Nothing in the former part of this section applies to cases in which the death has been caused by cholera or other epidemic disease. (S. 9, The Coroners' Act, 1871.) **M**

Responsibility of Jailer.

18. The Jailer shall be responsible for the safe custody of the records to be kept under section 12, for the commitment warrants and all other documents confided to his care, and for the money and other articles taken from prisoners.

Jailer to be present at night.

19. The Jailer shall not be absent from the prison for a night without permission in writing from the Superintendent; but, if absent without leave for a night from unavoidable necessity, he shall immediately report the fact and the cause of it to the Superintendent.

Powers of Deputy and Assistant Jailers.

20. Where a Deputy Jailer or Assistant Jailer is appointed to a prison, he shall, subject to the orders of the Superintendent, be competent to perform any of the duties, and be subject to all the responsibilities, of a Jailer under this Act or any rule there-under.

Subordinate Officers.

Duties of gate-keeper.

21. The Officer acting as gate-keeper, or any other officer of the prison, may examine anything carried in or out of the prison, and may stop and search or cause to be searched any person suspected of

bringing any prohibited article into or out of the prison, or of carrying out any property belonging to the prison, and, if any such article or property be found, shall give immediate notice thereof to the Jailer.

Subordinate officers not to be absent without leave.

22. Officers subordinate to the Jailer shall not be absent from the prison without leave from the Superintendent or from the Jailer.

Convict officers.

XLV of 1860.

23. Prisoners who have been appointed as officers of prisons shall be deemed to be public servants within the meaning of the Indian Penal Code.

CHAPTER IV.

ADMISSION, REMOVAL AND DISCHARGE OF PRISONERS.

Prisoners to be examined on admission.

24. (1) Whenever a prisoner is admitted into prison, he shall be searched and all weapons and prohibited articles shall be taken from him.

(2) Every criminal prisoner shall also, as soon as possible after admission, be examined under the general or special orders of the Medical Officer, who shall enter or cause to be entered in a book, to be kept by the Jailer, a record of the state of the prisoner's health, and of any wounds or marks on his person, the class of labour he is fit for if sentenced to rigorous imprisonment, and any observations which the Medical Officer thinks fit to add.

(3) In the case of female prisoners the search and examination shall be carried out by the matron under the general or special orders of the Medical Officer.

Effects of prisoners.

25. All money or other articles in respect whereof no order of a competent Court has been made, and which may with proper authority be brought into the prison by any criminal prisoner or sent to the prison for his use, shall be placed in the custody of the Jailer.

Removal and discharge of prisoners.

26. (1) All prisoners, previously to being removed to any other prison, shall be examined by the Medical Officer.

(2) No prisoner shall be removed from one prison to another unless the Medical Officer certifies that the prisoner is free from any illness rendering him unfit for removal.

(3) No prisoner shall be discharged against his will from prison, if labouring under any acute or dangerous distemper, nor until, in the opinion of the Medical Officer, such discharge is safe.

CHAPTER V.

DISCIPLINE OF PRISONERS.

Separation of prisoners.

27. The requisitions of this Act with respect to the separation of prisoners are as follows:—

(1) in a prison containing female as well as male prisoners, the female shall be imprisoned in separate buildings, or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any intercourse with, the male prisoners.

(2) in a prison where male prisoners under the age of 18 are confined, means shall be provided for separating them altogether from the other prisoners and for separating those of them who have arrived at the age of puberty from those who have not:

(3) unconvicted criminal prisoners shall be kept apart from convicted criminal prisoners; and

(4) civil prisoners shall be kept apart from criminal prisoners.

Association and segregation of prisoners.

28. Subject to the requirements of the last foregoing section, convicted criminal prisoners may be confined either in association or individually in cells or partly in one way and partly in the other.

Solitary confinement.

29. No cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison, and every prisoner so confined in a cell for more than twenty-four hours, whether as a punishment or otherwise, shall be visited at least once a day by the Medical Officer or Medical Subordinate.

Prisoners under sentence of death.

30. (1) Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence, be searched by, or by order of, the Jailor and all articles shall be taken from him which the Jailor deems it dangerous or inexpedient to leave in his possession.

(2) Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of a guard.

CHAPTER VI.

FOOD, CLOTHING AND BEDDING OF CIVIL AND UNCONVICTED CRIMINAL PRISONERS.

Maintenance of certain prisoners from private sources.

31. A civil prisoner or an unconvicted criminal prisoner shall be permitted to maintain himself, and to purchase, or receive from private sources at proper hours, food, clothing, bedding or other necessaries, but subject to examination and to such rules as may be approved by the Inspector-General.

Restriction on transfer of food and clothing between certain prisoners.

32. No part of any food, clothing, bedding or other necessaries belonging to any civil or unconvicted criminal prisoner shall be given, hired or sold to any other prisoner; and any prisoner transgressing the provisions of this section shall lose the privilege of purchasing food or receiving it from private sources, for such time as the Superintendent thinks proper.

Supply of clothing and bedding to civil and convicted criminal prisoners.

33. (1) Every civil prisoner and unconvicted criminal prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary.

(2) When any civil prisoner has been committed to prison in execution of a decree in favour of a private person, such person, or his representative, shall, within forty-eight hours after the receipt by him of a demand in writing, pay to the Superintendent the cost of the clothing and bedding so supplied to the prisoner; and in default of such payment the prisoner may be released.

CHAPTER VII.

EMPLOYMENT OF PRISONERS.

Employment of civil prisoners.

34. (1) Civil prisoners may, with the Superintendent's permission, work and follw any trade or profession.

(2) Civil prisoners finding their own implements, and not maintained at the expense of the prison, shall be allowed to receive the whole of their earnings; but the earnings of such as are furnished with implements or are maintained at the expense of the prison shall be subject to a deduction, to be determined by the Superintendent, for the use of implements and the cost of maintenance.

Employment of criminal prisoners.

35. (1) No criminal prisoner sentenced to labour or employed on labour at his own desire shall, except on an emergency with the sanction in writing of the Superintendent, be kept to labour for more than nine hours in any one day.

(2) The Medical Officer shall from time to time examine the labouring prisoners while they are employed, and shall at least once in every fortnight cause to be recorded upon the history-ticket of each prisoner employed on labour the weight of such prisoner at the time.

(3) When the Medical Officer is of opinion that the health of any prisoner suffers from employment on any kind or class of labour, such prisoner shall not be employed on that labour but shall be placed on such other kind or class of labour as the Medical Officer may consider suited for him.

Employment of criminal prisoners sentenced to simple imprisonment.

36. Provision shall be made by the Superintendent for the employment (as long as they so desire) of all criminal prisoners sentenced to simple imprisonment; but no prisoner not sentenced to rigorous imprisonment shall be punished for neglect of work excepting by such alteration in the scale of diet as may be established by the rules of the prison in the case of neglect of work by such a prisoner.

CHAPTER VIII.

HEALTH OF PRISONERS.

Sick prisoners.

37. (1) The names of prisoners desiring to see the Medical Subordinate or appearing out of health in mind or body shall, without delay, be reported by the officer in immediate charge of such prisoners to the Jailer.

(2) The Jailer shall, without delay, call the attention of the Medical Subordinate to any prisoner desiring to see him, or who is ill, or whose state of mind or body appears to require attention, and shall carry into effect all written directions given by the Medical Officer or Medical Subordinate respecting alterations of the discipline or treatment of any such prisoner.

Record of directions of Medical Officers.

38. All directions given by the Medical Officer or Medical Subordinate in relation to any prisoner, with the exception of orders for the supply of medicines or directions relating to such matters as are carried into effect by the Medical Officer himself or under his superintendence, shall be entered day by day in the prisoner's history-ticket or in such other record as the Local Government may by rule direct, and the Jailer shall make an entry in its proper place stating in respect of each direction the fact of its having been or not having heen complied with, accompanied by such observations, if any, as the Jailer thinks fit to make, and the date of the entry.

Hospital.

39 In every prison an hospital or proper place for the reception of sick prisoners shall be provided.

CHAPTER IX.

VISITS TO PRISONERS.

Visits to civil and unconvicted criminal prisoners.

40. Due provision shall be made for the admission, at proper times and under proper restrictions, into every prison of persons with whom civil or unconvicted criminal prisoners may desire to communicate, care being taken that so far as may be consistent with the interests of justice, prisoners under trial may see their duly qualified legal advisers without the presence of any other person.

Search of visitors.

41. (1) The Jailer may demand the name and address of any visitor to a prisoner, and, when the Jailer has any ground for suspicion, may search any visitor, or cause him to be searched, but the search shall not be made in the presence of any prisoner or of another visitor.

(2) In case of any such visitor refusing to permit himself to be searched, the Jailer may deny him admission; and the grounds of such proceeding, with the particulars thereof, shall be entered in such record as the Local Government may direct.

CHAPTER X.

OFFENCES IN RELATION TO PRISONS.

Penalty for introduction or removal of prohibited articles into or from prison and communication with prisoners.

42. Whoever, contrary to any rule under section 60, introduces or removes or attempts by any means whatever to introduce or remove, into or from any prison, or supplies or attempts to supply to any prisoner outside the limits of a prison, any prohibited article,

and every officer of a prison who, contrary to any such rule, knowingly suffers any such article to be introduced into or removed from any prison, to be possessed by any prisoner, or to be supplied to any prisoner outside the limits of a prison,

and whoever, contrary to any such rule, communicates or attempts to communicate with any prisoner,

and whoever abates any offence made punishable by this section,

shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

(Notes).

General.

(1) **Taking food to an under-trial prisoner.**

Per Stuart, C.J., and *Oldfield, J.* (*Spankie, J. dissenting*). The act of conveying or attempting to convey food to a man confined in the *havalat* and under trial, does not amount either to house trespass or to an offence punishable under this section. 2 A. 301. **N**

(2) **Acquittal on previous charge—Subsequent charge for different offence.**

Per Stuart, C.J.—Where a person charged with the offence of criminal trespass in having taken food to an under-trial prisoner in an *havalat* against the order of the officer guarding it, was acquitted *held* that a subsequent trial for an offence under this section was barred. 2 A. 301. **O**

(3) **Punishment of whipping.**

In pursuance of S. 5, clause (*b*) of the Whipping Act, 1909 (IV of 1909), the Governor-General in Council is pleased to specify offences under the laws mentioned in the Schedule hereto annexed, being offences punishable under the said laws with imprisonment, as offences for the abetment or commission of or attempt to commit which juvenile offenders may be punished with whipping in accordance with the provisions of the said section. **P**

THE SCHEDULE.

1—21. * * * *

22. The Prisons Act, 1894, (IX of 1894), S. 42.

23—35. * * * *

[See, Govt. of India, Home Dept. (Judicial) Notn. No. $\frac{350}{8:32}$ 1910.] **Q**

Power to arrest for offence under section 42.

43. When any person, in the presence of any officer of a prison, commits any offence specified in the last foregoing section, and refuses on demand of such officer to state his name and residence, or gives a name or residence which such officer knows, or has reason to believe,

to be false, such officer may arrest him, and shall without unnecessary delay make him over to a Police officer, and thereupon such Police-officer shall proceed as if the offence had been committed in his presence.

Publication of penalties.

44. The Superintendent shall cause to be affixed, in a conspicuous place outside the prison, a notice in English and the Vernacular setting forth the acts prohibited under section 42 and the penalties incurred by their commission.

CHAPTER XI.

PRISON-OFFENCES.

Prison-offences.

45. The following acts are declared to be prison-offences when committed by a prisoner :—

(1) such wilful disobedience to any regulation of the prison as shall have been declared by rules made under section 59 to be a prison-offence ;

(2) any assault or use of criminal force ;

(3) the use of insulting or threatening language;

(4) immoral or indecent or disorderly behaviour ;

(5) wilfully disabling himself from labour ;

(6) contumaciously refusing to work ;

(7) filing, cutting, altering or removing handcuffs, fetters or bars without due authority ;

(8) wilful idleness or negligence at work by any prisoner sentenced to rigorous imprisonment ;

(9) wilful mismanagement of work by any prisoner sentenced to rigorous imprisonment ;

(10) wilful damage to prison-property ;

(11) tampering with or defacing history-tickets, records or documents ;

(12) receiving, possessing or transferring any prohibited article ;

(13) feigning illness ;

(14) wilfully bringing a false accusation against any officer or prisoner ;

(15) omitting or refusing to report, as soon as it comes to his knowledge, the occurrence of any fire, any plot or conspiracy, any escape, attempt or preparation to escape, and any attack or preparation for attack upon any prisoner or prison-official ; and

(16) conspiring to escape, or to assist in escaping, or to commit any other of the offences aforesaid.

Punishment of such offences.

46. The Superintendent may examine any person touching any such offence, and determine thereupon, and punish such offence by—

(1) a formal warning.

Explanation.—A formal warning shall mean a warning personally addressed to a prisoner by the Superintendent and recorded in the punishment-book and on the prisoner's history-ticket;

(2) change of labour to some more irksome or severe form,

(3) hard labour for a period not exceeding seven days in the case of convicted criminal prisoners not sentenced to rigorous imprisonment;

(4) such loss of privileges admissible under the remission system for the time being in force as may be prescribed by rules made by the Governor-General in Council [1];

(5) the substitution of gunny or other coarse fabric for clothing of other material, not being woolen, for a period which shall not exceed three months;

(6) imposition of handcuffs of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the Governor General in Council [2];

(7) imposition of fetters of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the Governor General in Council [3];

(8) separate confinement for any period not exceeding six months:

Explanation.—Separate confinement means such confinement with or without labour as secludes a prisoner from communication with, but not from sight of, other prisoners, and allows him not less than one hour's exercise *per diem* and to have his meals in association with one or more other prisoners;

(9) penal diet,—that is, restriction of diet in such manner and subject to such conditions regarding labour as may be prescribed by the Local Government:

Provided that such restriction of diet shall in no case be applied to a prisoner for more than ninety-six consecutive hours, and shall not be repeated except for a fresh offence nor until after an interval of one week;

(10) Cellular confinement for any period not exceeding fourteen days:

Provided that after each period of cellular confinement an interval of not less duration than such period must elapse before the prisoner is again sentenced to cellular or solitary confinement;

Explanation.—Cellular confinement means such confinement with or without labour as entirely secludes a prisoner from communication with, but not from sight of, other prisoners;

(11) Solitary confinement for any period not exceeding seven days:

Provided that after each period of solitary confinement an interval of not less duration than such period must elapse before the prisoner is again sentenced to solitary or cellular confinement:

Explanation.—Solitary confinement means such confinement with or without labour as entirely secludes the prisoner both from sight of, and communication with, other prisoners:

(12) Penal diet as defined in cl. (9) combined with solitary confinement as defined in cl. (11);

(13) whipping, provided that the number of stripes shall not exceed thirty:

Provided that nothing in this section shall render any female or civil prisoner liable to the imposition of any form of handcuffs or fetters, or to whipping.

(Notes).

1.—"Such loss of....in Council."

Loss of privileges admissible under the remission system for the time being in force.

For a prison-offence any one of the following punishments involving loss of privileges admissible under the remission system may be awarded:—

(*a*) forfeiture of marks earned but not converted into remission;

(*b*) forfeiture of future marks not yet earned;

(*c*) temporary forfeiture of class, grade or prison privileges;

(*d*) forfeiture of remission earned;

(*e*) temporary or permanent reduction from a higher to a lower class or grade; or

(*f*) temporary or permanent exclusion from the remission system.

Provided, (i) that the number of marks forfeited under cl. (*a*) or cl. (*b*) shall not exceed the total number of marks which would be ordinarily obtainable by a prisoner during a period of three months immediately preceding or succeeding the forfeiture respectively;

1.—"Such loss of....in Council"—(Concluded).

(ii) that the remission forfeited under cl. (*d*) shall not, except with the previous sanction of the Inspector-General, exceed that earned by the prisoner during the three months preceding the date of the order directing such forfeiture ; and

(iii) that no order directing the loss of privileges under cl. (*f*) shall take effect without the previous sanction of the Inspector-General.

[See Govt. of India Resolution No. $\frac{2 \text{ Jails}}{500\text{-}510}$, dated 31st August, 1896.] R

2.—"Imposition of.....Council."

1. **The imposition of handcuffs.**

1. Handcuffs imposed by way of punishment for prison offences shall be iron bar-handcuffs weighing, with lock, not more than 2 lb. each, or swivel with spring-catch handcuffs weighing not more than $1\frac{1}{4}$ lb. each, or chain handcuffs weighing not more than 1 lb. each. S

2. **Handcuffs may be imposed.**

(*a*) On the wrists in front by day or night for a period of not more than twelve hours at a time, with intervals of not less than twelve hours between each period, and for not more than four consecutive days or nights; T

(*b*) on the wrists behind by day only for a period of not more than six hours in any day of twenty-four-hours, and for not more than four consecutive days; U.

(*c*) by attaching the handcuffs affixed on the prisoner's wrists to a staple in front of the prisoner by day for not more than seven consecutive days and for not more than nine hours on each day, with an interval of at least one hour after the handcuffs have been so attached for not less than three, or more than five, hours : V

Provided that such staple shall not be higher than the prisoner's shoulder nor lower than his waist, and that no prisoner shall be attached by handcuffs to a staple except in the presence of other prisoners. W

3. **A prisoner while undergoing punishment in handcuffs shall be under complete shelter from the sun.**

[See Govt. of India, Resolution No. $\frac{2 \text{ Jails}}{500\text{-}510}$, dated the 31st August, 1896.] X

3.—"Imposition of....Council."

The imposition of fetters.

1. The following classes of fetters may be used in prisons :—

(*a*) Link fetters composed of a chain and ankle-rings. The total weight of such fetters, including ankle-rings, shall not exceed 3 lb. and the chain shall be not less than two feet in length. Y

(*b*) Bar-fetters composed of two bars joined together by a link and attached to ankle-rings. The total weight of such fetters, including the ankle-rings, shall not exceed 5 lb., and each bar shall be not less than twenty inches in length. Z

3.—"Imposition of.... Council"—(Concluded).

(c) Cross-bar fetters composed of a single bar for the purpose of keeping the legs apart and of ankle rings. The total weight of such fetters, including ankle-rings, shall not exceed 2½ lb. The length of the bar shall not exceed sixteen inches in the case of men who are not less than five feet six inches in height, or fourteen inches in the case of men below this height. A

2 —The maximum period for which fetters may be continuously imposed shall be:—

(a) in case of linked fetters, twelve months;

(b) in the case of bar-fetters, six months;

(c) in the case of cross-bar fetters, two hundred and forty hours.

A period of at least ten days must elapse after fetters of any kind have been imposed as a punishment for a prison offence before they can be again imposed as a punishment for another prison-offence, whether of the same kind or not. B

[See Govt. of India Resolution No. $\frac{2 \text{ Jails}}{500\text{-}510}$, dated 31st August, 1896.] C

Plurality of punishments under Section 46.

47. Any two of the punishments enumerated in the last foregoing section may be awarded for any such offence in combination, subject to the following exceptions, namely:—

(1) formal warning shall not be combined with any other punishment except loss of privileges under cl. (4) of that section;

(2) penal diet shall not be combined with change of labour under cl. (2) of that section, nor shall any additional period of penal diet awarded singly be combined with any period of penal diet awarded in combination with solitary confinement;

(3) solitary confinement shall not be combined with cellular confinement or with separate confinement, not cellular confinement with separate confinement, so as to prolong the total period of seclusion to which the prisoner shall be liable;

(4) whipping shall not be combined with any other form of punishment except cellular or separate confinement and loss of privileges admissible under the remission system.

Award of punishments under sections 46 and 47.

48. (1) The Superintendent shall have power to award any of the punishments enumerated in the two last foregoing sections, subject, in the case of separate confinement for a period exceeding one month, to the previous confirmation of the Inspector General.

(2) No officer subordinate to the Superintendent shall have power to award any punishment whatever.

Punishments to be in accordance with foregoing sections.

49. Except by order of a Court of Justice, no punishment other than the punishments specified in the foregoing sections shall be inflicted on any prisoner, and no punishment shall be inflicted on any prisoner otherwise than in accordance with the provisions of those sections.

Medical Officer to certify to fitness of prisoner for punishment.

50. (1) No punishment of penal diet, either singly or in combination, or of whipping, or of change of labour under section 46, clause (2), shall be executed until the prisoner to whom such punishment has been awarded has been examined by the Medical Officer, who, if he considers the prisoner fit to undergo the punishment, shall certify accordingly in the appropriate column of the punishment-book prescribed in section 12.

(2) If he considers the prisoner unfit to undergo the punishment, he shall in like manner record his opinion in writing and shall state whether the prisoner is absolutely unfit for punishment of the kind awarded, or whether he considers any modification necessary.

(3) In the latter case he shall state what extent of punishment he thinks the prisoner can undergo without injury to his health.

Entries in punishment-books.

51. (1) In the punishment-book prescribed in section 12 there shall be recorded, in respect of every punishment inflicted, the prisoner's name, register number and the class (whether habitual or not) to which he belongs, the prison-offence of which he was guilty, the date on which such prison-offence was committed, the number of previous prison-offences recorded against the prisoner, and the date of his last prison-offence, the punishment awarded, and the date of infliction.

(2) In the case of every serious prison-offence, the names of the witnesses proving the offence shall be recorded, and, in the case of offences for which whipping is awarded, the Superintendent shall record the substance of the evidence of the witnesses, the defence of the prisoner, and the finding with the reasons therefor.

(3) Against the entries relating to each punishment the Jailer and Superintendent shall affix their initials as evidence of the correctness of the entries.

Procedure on committal of heinous offence [1].

52. If any prisoner is guilty of any offence against prison-discipline which, by reason of his having frequently committed such offences or otherwise, in the opinion of the Superintendent, is not adequately punishable by the infliction of any punishment which he has power under this Act to award, the Superintendent may forward such prisoner to the Court of the District Magistrate or of any Magistrate of the 1st class having jurisdiction, together with a statement of the circumstances, and such Magistrate shall thereupon inquire into and try the charge so brought against the prisoner, and upon conviction, may sentence him to imprisonment which may extend to one year, such term to be in addition to any term for which such prisoner was undergoing imprisonment when he committed such offence, or may sentence him to any of the punishments enumerated in section 46:

Provided that the District Magistrate may transfer the case for inquiry and trial to any Magistrate of the first class: and

Provided also that no person shall be punished twice for the same offence.

(Notes).

1.—"Procedure.... offence."

Trial for a prison-offence—Procedure.

When a Magistrate deals with an offence under S. 52 of the Prisons Act, he is bound to inquire and try the charge in a regular manner, *e.g.*, he must not omit to frame a charge or to record an examination of the accused under S. 364 of the Crim. Pro. Code. A.W.N. 1900, p. 183. **D**

Whipping.

53. (1) No punishment of whipping shall be inflicted in instalments, or except in the presence of the Superintendent and Medical Officer or Medical Subordinate.

(2) Whipping shall be inflicted with a light ratan not less than half an inch in diameter on the buttocks, and in case of prisoners under the age of sixteen it shall be inflicted, in the way of school discipline, with a lighter ratan.

Offences by prison subordinates.

54. (1) Every Jailer or officer of a prison subordinate to him who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous noticein writing of his intention

for the period of two months, or who shall wilfully overstay any leave granted to him, or who shall engage without authority in any employment [illegible]

AMENDMENT EFFECTED BY ACT XIII OF 1910 UNDER S. 52, ACT IX OF 1894.

(1) after the words "Magistrate of the first class" the words "or Presidency Magistrate" shall be inserted; and

(2) for the first proviso the following shall be substituted, namely:—

"Provided that any such case may be transferred for inquiry and trial by the District Magistrate to any Magistrate of the first class and by a Chief Presidency Magistrate to any other Presidency Magistrate; and."

Presidency Magistrate, whether a "District Magistrate" or "Magistrate of the first class" under S. 52—Jurisdiction to try offences under the Act.

Ordinarily a Presidency Magistrate would not be included in the terms "District Magistrate" or "Magistrate of the first class," and therefore, a Presidency Magistrate has no jurisdiction to try offences under S. 52 of this Act. 32 M. 308.

custody or control of a prison-officer belonging to such prison, shall be deemed to be in prison and shall be subject to all the same incidents as if he were actually in prison.

Confinement in irons.

56. Whenever the Superintendent considers it necessary (with reference either to the state of the prison or the character of the prisoners) for the safe custody of any prisoners that they should be confined in irons, he may, subject to such rules and instructions as may be laid down by the Inspector-General with the sanction of the Local Government, so confine them.

Confinement of prisoners under sentence of transportation in irons.

57. (1) Prisoners under the sentence of transportation may, subject to any rules made under section 60, be confined in fetters for the first three months after admission to prison.

(2) Should the Superintendent consider it necessary, either for the safe custody of the prisoner himself or for any other reason, that fetters should be retained on any such prisoner for more than three months, he shall apply to the Inspector-General for sanction to their retention for the period for which he considers their retention necessary, and the Inspector-General may sanction such retention accordingly.

Prisoners not to be ironed by Jailer except under necessity.

58. No prisoner shall be put in irons or under mechanical restraint by the Jailer of his own authority, except in case of urgent necessity, in which case notice thereof shall be forthwith given to the Superintendent.

Power to make rules.

59. The Governor-General-in-Council may for any part of British India, and each Local Government with the previous sanction of the Governor-General-in-Council may, for the territories under its administration, make rules consistent with this Act—

(1) defining the acts which shall constitute prison-offences [1];

(2) determining the classification of prison-offences into serious and minor offences;

(3) fixing the punishments [2] admissible under this Act which shall be awardable for commission of prison-offences or classes thereof;

(4) declaring the circumstances in which acts constituting both a prison-offence and an offence under the Indian Penal Code may or may not be dealt with as a prison-offence [3]; XLV of 1860.

(5) for the award of marks and the shortening of sentences [4];

(6) regulating the use of arms against any prisoner or body of prisoners in the case of an outbreak or attempt to escape [5];

(7) defining the circumstances and regulating the conditions under which prisoners in danger of death may be released [6];

(8) regulating the transfer from one part of British India to another of prisoners whose term of transportation or imprisonment is about to expire; and,

(9) generally, for carrying into effect the purposes of this Act [7].

(Notes).

1.—"Defining....prison offences."

Prison offences.

The following acts are forbidden, and every prisoner who wilfully commits any of the following acts shall be deemed to have wilfully disobeyed the regulations of the prison, and to have committed a prison-offence within the meaning of S. 45 of the said Act :—

(1) Talking during working hours, or talking loudly, laughing, or singing at any time after having been ordered by an officer of the prison to desist ;

(2) Quarrelling with any other prisoner ;

(3) Secreting any article whatever ;

(4) Showing disrespect to any jail officer or official visitor ;

(5) Making groundless complaints ;

(6) Answering untruthfully any question put by an officer of the prison or an official visitor;

(7) Holding any communication (in writing, by word of mouth, or otherwise) with an outsider, with a prisoner of the opposite sex, civil or under-trial prisoner, or a prisoner of a different class in disobedience of the regulations of the prison ;

(8) Abetting the commission of any prison-offence ;

(9) Omitting to assist in the maintenance of discipline by reporting any prison offence, or to give assistance to an officer of the prison when called on to do so ;

(10) Doing any act or using any language calculated to wound or offend the feelings and prejudices of a fellow-prisoner ;

(11) Doing any act calculated to create any unnecessary alarm in the minds of the prisoners or officers of the prison ;

(12) Leaving without permission of an officer of the prison the gang to which he is attached, or the part of the prison in which he is confined ;

(13) Leaving without permission of an officer of the ward, the yard, the place in file, the seat or berth assigned to him ;

(14) Loitering about the yards, or lingering in the wards when these are open ;

(15) Omitting or refusing to march in file when moving about the prison ;

(16) Visiting the latrines or bathing platforms except at stated hours or without permission of an officer of the prison, or resorting unnecessarily to the night latrine, or omitting or refusing to employ dry earth in the manner directed by the prison regulations ;

(17) Refusing to eat the food prescribed by the prison diet scale ;

(18) Eating or appropriating any food not assigned to him, or taking from, or adding to the portions assigned to, other prisoners ;

(19) Removing without permission of an officer of the prison food from the cook room or godowns or from the place where meals are served, or disobeying any orders as to the issue and distribution of food and drink ;

1.—"Defining.... prison offences"—(Concluded).

(20) Wilfully destroying food, or throwing it away without orders ;

(21) Introducing into food or drink anything likely to render it unpalatable or unwholesome ;

(22) Omitting or refusing to wear the clothing given to him, or exchanging any portion of it for the clothing of other prisoners, or losing, discarding, damaging, or altering any part of it ;

(23) Removing, defacing, or altering any distinctive number, mark or badge attached to, or worn on, the clothing or person ;

(24) Omitting or refusing to keep the person clean, or disobeying any order regulating the cutting of hair or nails ;

(25) Omitting or refusing to keep clothing, blankets, bedding, fetters, neck-rings, neck-tickets, iron cups or platters clean, or disobeying any order as to the arrangement or disposition of such articles ;

(26) Tampering in any way with prison locks, lamps or lights or other property with which he has no concern ;

(27) Stealing the prison clothing or any part of the prison kit of any other prisoner ;

(28) Committing a nuisance in any part of the prison ;

(29) Spitting on or otherwise soiling any floor, door, wall, or other part of the prison building or any article in the prison ;

(30) Wilfully befouling the wells, latrines, washing, or bathing places ;

(31) Damaging the trees and vegetables in the garden of the jail, or maltreating the prison cattle ;

(32) Omitting or refusing to take due care of all prison property entrusted to him ;

(33) Omitting or refusing to take due care of, or injuring, destroying or misappropriating, the materials and implements entrusted to him for work ;

(34) Omitting to report at once any loss, breakage or injury which he may accidentally have caused to prison property or implements ;

(35) Manufacturing any article without the knowledge or permission of an officer of the prison ;

(36) Performing any portion of the task allotted to another prisoner, or obtaining the assistance of another prisoner in the performance of his own task ;

(37) Appropriating any portion of the task performed by any other prisoner ;

(38) Mixing or adding any foreign substance to the materials issued for work ;

(39) Wilfully causing to himself any illness, injury or disability ;

(40) Causing, or omitting to assist in suppressing, violence or insubordination of any kind ;

(41) Taking part in any attack upon any prisoner or officer of the prison ;

(42) Omitting or refusing to help any officer of the prison in case of an attempted escape or of an attack upon such officer or upon another prisoner ;

(43) Disobeying any lawful order of an officer of the prison or omitting or refusing to perform duties in the manner prescribed.

[See General Statutory Rules and Orders Vol. III.]

2.—"Fixing the punishments."

The classification of punishments.

The punishments enumerated in S. 46 of the said Act, including those prescribed by the Governor-General in Council under S. 46, cls. (4), (6) and (7)—shall be classified into minor and major punishments.

The following punishments shall be considered minor :—

(1) Formal warning ;

(2) Change of labour to some more irksome or severe form ;

(3) Forfeiture of marks earned, but not converted into remission ;

(4) Forfeiture of future marks not yet earned ;

(5) Temporary exclusion from the remission system ;

(6) Temporary forfeiture of class, grade or prison privileges ;

(7) Temporary reduction from a higher to a lower class or grade ;

(8) Penal diet ;

(9) Solitary confinement for not more than 48 hours ;

(10) Cellular confinement for not for more than 7 days ;

(11) Separate confinement for not more than 14 days ;

(12) Imposition of handcuffs otherwise than by handcuffing a prisoner behind or to a staple ;

(13) Imposition of link-fetters for not more than 30 days ; and

(14) Substitution of gunny or other coarse clothing for the portion of the ordinary prison dress which is not woollen ;

The following punishments shall be considered major punishments :—

(1) Hard labour in the case of prisoners not sentenced to rigorous imprisonment ;

(2) (*a*) Forfeiture of remission earned ;

(*b*) Permanent reduction from a higher to a lower class or grade ;

(*c*) Permanent exclusion from the remission system ;

(3) Solitary confinement for a period exceeding 48 hours ;

(4) Cellular confinement for a period exceeding 7 days ;

(5) Separate confinement for a period exceeding 14 days ;

(6) Link-fetters, if imposed for more than 30 days ;

(7) Bar-fetters ;

(8) Cross-bar fetters ;

(9) Handcuffing behind or to a staple ;

(10) Penal diet combined with solitary confinement for more than 48 hours ;

(11) Whipping ; and

(12) Any combination of minor punishments admissible under section 47 of the Act.

[See General Statutory Rules and Orders, Vol. III.]

3.—"Declaring....prison offence."

The circumstances in which an act constituting both a prison-offence and an offence under the Indian Penal Code may or may not be dealt with as a prison-offence.

1. When in the opinion of the Superintendent any of the following offences are established against any prisoner, he shall refer the case to the Magistrate exercising jurisdiction for enquiry in accordance with the Code of Criminal Procedure, 1882 (now Act V, 1898):—

(1) Offences punishable under Ss. 147, 148 and 152, I.P.C.

(2) Offences punishable under Ss. 222, 223 and 224, I.P.C.

(3) Offences punishable under Ss. 304-A, 309, 325 and 326, I.P.C.

(4) Any offence triable exclusively by the Court of Session.

2. It shall be in the discretion of the Superintendent to determine with respect to any other act which constitutes both a prison-offence and an offence under the Indian Penal Code, whether he will use his own powers of punishment, or move the Magistrate exercising jurisdiction to enquire into it in accordance with the Code of Criminal Procedure, 1882. (Now Act V of 1898). **H & I**

[See General Statutory Rules nd Orders, Vol. III.]

4.—"For the award....sentences."

1. The award of marks and the shortening of sentences.

1. For the purposes of these rules convicted prisoners shall be divided into three classes, namely:—

(1) Thugs, robbers by Administration of poisonous drugs, and professional, hereditary or specially dangerous criminals convicted of heinous organised crime, such as dacoity.

(2) Dacoits and other persons convicted of heinous organised crime who are not professional, hereditary or specially dangerous criminals.

(3) All other prisoners.

2. Save as hereinafter otherwise provided, every convicted prisoner whose sentence or aggregate of sentences, exclusive of any period awarded in default of payment of fine amounts to one year or upwards, shall be eligible for marks under these rules:

Provided that a convicted prisoner under a sentence of transportation or imprisonment under S. 2 of the Frontier Murderous Outrages Regulation, 1901 (IV of 1901), shall not, in respect of such sentence, be eligible for marks unless he was under the age of fifteen years at the time of his conviction:

Provided also that a convicted prisoner under a sentence of simple imprisonment, shall not, in respect of such sentence, be eligible for marks, unless he voluntarily labours throughout the term of such imprisonment.

3. For the purposes of these rules a life-sentence shall mean—

Twenty-five years' imprisonment in the case of prisoners included in cls. (1) and (2).

Twenty-years' imprisonment in the case of all other prisoners.

4. The remission earned under these rules shall have the following effects, namely:—

4.—"For the award....sentences"—(Continued).

(*a*) In the case of a prisoner included in cl. (1)—

If under life-sentence, the period of remission shall shorten *pro tanto* the term of twenty-five years which must otherwise elapse before he becomes eligible for a self-supporter's ticket in the Andamans;

If under sentence for a term of years, the period of remission earned shall be passed under such police surveillance as the Local Government may prescribe.

Explanation.—A prisoner included in cl. (1) and under sentence for life shall, at the expiry of twenty-five years, less remission earned, if he so desires and is capable of earning livelihood, be transferred to the Andamans, irrespective of his age.

(*b*) In the case of a prisoner included in cl. (2), whether under sentence for life or term, the period of remission earned shall be deducted from the sentence, and shall be passed under such police surveillance as the Local Government may prescribe.

(*c*) In the case of all other prisoners remission earned shall reduce the sentence absolutely.

5. Every prisoner who is entitled to earn remission under the foregoing rules, shall be brought under the remission system on the first day of the calendar month next following that in the course of which he became a prisoner :

Provided that, if a prisoner admitted under a sentence of less than one year is subsequently sentenced to a further term which makes up the aggregate to one year, he shall, if otherwise eligible and unless such subsequent sentence is inflicted on account of riot, escape, or repeated prison offences, commence to earn marks on the first day of the calendar month next following that in which the second sentence was passed.

6. Ordinary marks shall be awarded on the following scale, namely :—

(*a*) One mark daily for thoroughly good conduct and scrupulous attention to all prison regulations.

(*b*) One mark daily for industry and the due performance of the daily task imposed upon him.

(*c*) One mark daily for any day on which special diligence in work is shown.

7. In addition to any marks earned under the last preceding rule, convict warders shall receive four marks daily, convict overseers two marks daily, and convict night watchmen one mark daily ; but convict warders and overseers shall not be eligible for any additonal marks under cl. (*c*) of that rule. It will thus be possible for a night watchman showing special diligence in work to obtain four marks a day, which is likewise the maximum number obtainable by a convict overseer.

8. On Sundays and holidays, when ordinary prison industries are stopped, marks for conduct only can be earned, but prisoners employed on prison services may be awarded also marks for labour. Convict officers shall be awarded marks as on other days.

4.—"For the award....sentences"—(Continued).

9. A prisoner in hospital shall receive marks for condnct only; Provided that he does not, by any improper action of his own after admission to prison, induce or aggravate the disease on account of which he was admitted into hospital.

10. A convict sent to a Court to give testimony in accordance with a requisition under the Prisoners' Testimony Act (XV of 1869) shall be credited during his absence with marks in the same way as a convict in hospital.

11. Subject to the conditions hereinafter specified, special marks may, in the discretion of the Superintendent, be given—

(*a*) for special service such as—

(1) assisting in detecting or preventing breaches of prison discipline or regulations;

(2) success in teaching a handicraft;

(3) special excellence of work;

(4) protecting an officer of the prison from attack;

(5) assisting an officer of the prison in case of an outbreak, fire or similar emergency; or

(6) economy in the wearing of clothing; and

(*b*) to a prisoner who, for the period of one year immediately preceding the grant of the marks, has committed no prison offence.

12. (1) The Superintendent of a District Jail may award to the same prisoner, under sub-head (*a*) of rule 11, not more than one hundred special marks for any one service or in any one quarter, and the Superintendent of a Central Jail may, in the like manner, award not more than five hundred special marks.

(2) Where the Superintendent is of opinion that more special marks than are authorised by sub-rule (1) should be awarded under sub-head (*a*) of the said rule, he shall submit the case for the orders of the Inspector-General who shall submit for the orders of the Local Government any case in which he proposes to award more than one thousand special marks.

(3) The number of special marks awarded to the same prisoner under sub-head (*b*) of the said rule shall not exceed three hundred and sixty in any one year.

(4) Every award of special marks by the Superintendent shall, together with a statement of the reasons for such award, be reported to the Inspector-General.

13. No prisoner shall receive marks for the day on which any offence is committed.

13-A. The Superintendent may, with the previous sanction of the Inspector-General, restore to the benefits of the remission system any prisoner removed therefrom.

14. The award of ordinary marks shall be made either by the Superintendent himself or, subject to his control and supervision, by the Deputy Superintendent, Jailor, Deputy Jailor, or any other officer specially empowered on that behalf by the Inspector-General. The award of special marks shall be made only by the Superintendent or Inspector-General.

4.—"For the award....sentences"—(Continued).

15. The officer awarding marks shall, before making the award, consult the prisoner's work-sheet and history-ticket, in which every offence proved against the prisoner must be carefully recorded. In the absence of any entry against the prisoner on any day, it shall be presumed that he has earned "ordinary" marks for that day. Ordinary marks shall be recorded in the presence of the prisoner weekly, fortnightly or monthly, as circumstances admit, and special marks shall be awarded as soon as possible after they have been earned. All marks shall be noted in the Mark Register, which shall be written up from the entries in the prisoner's history-ticket.

16. Every convict coming under the operations of the remission system shall be entitled to a remission of one day of his sentence for every twenty-four marks earned by him. Marks shall be converted into remission, and the actual remission earned shall be recorded quarterly in the Mark Register. The amount of remission earned quarterly by each convict shall be intimated to him by the Superintendent at the first weekly inspection after the close of each quarter.

17. Remission being thus earned in days shall be recorded in days in the Mark Register, and shall not be converted into months or year: Provided that remission on account of Her Majesty's Proclamation or Jubilee, which was granted in months and not converted into days.

18. In converting marks into quarterly remission, any balance of marks which remains after dividing the total by 24 shall be carried forward to the next quarter. In converting marks into remission at the end of a prisoner's sentence, if there is a balance of 12 or upwards remaining after dividing the total by 24, it shall be considered equivalent to one days' remission, any smaller balance being disregarded.

19. In the first week of each month a list shall be made out of those prisoners who, on the supposition that they will earn their full ordinary marks during the intervening period, will be entitled to release in the course of the month next ensuing. This list shall be submitted to the Superintendent, signed by him and filed in the Office. If the prisoner fails to learn the number of marks assumed in the list, or if from bad conduct he forfeits any of the marks already earned, the date of his release will be proportionately deferred ; while if, on the other hand, he earns an additional number of marks, the date of his release will be proportionately accelerated. As soon as he has earned such number of marks as entitled him to release, he shall, if otherwise eligible, be released by the Superintendent without further sanction or reference. The amount of remission finally earned shall be endorsed on the prisoner's warrant and the endorsement signed by the Superintendent.

20. When a prisoner is transferred from one prison to another, a record shall be sent with him showing the amount of remission and the number of marks which stand to his credit. Prisoners transferred from one prison to another shall be awarded by the officers of the receiving prison marks for conduct, but not for industry during the period spent in transit. J

[See General Statutory Rules and Orders, Vol. III.]

4.—"For the award....sentences"—(Continued).

(2) **Rules—United Provinces of Agra and Oudh.**

The following subsidiary rules made by the Local Government are published for general information :—

(A)—Explanatory of the mark rules.

G.O. No. 2975 and No. 2309-VI—25-B, dated 20th July 1894 and 7th August 1896.

No. 2701-VI-252-B. 2, dated 26th August 1902.

1. When a convict is admitted into a jail under a sentence of transportation or imprisonment, whether for life or a term, on conviction of an offence classified as heinous in the first explanation hereto annexed, the Superintendent of the Central Prison shall forthwith ascertain from the Magistrate of the district in which the conviction was obtained—

(1) Whether the said convict is a professional, hereditary or specially dangerous criminal ; and

(2) unless this is of the essence of the offence, whether the crime of which he was convicted was "organized" within the meaning of the second explanation hereto annexed.

Explanation I.—The following offences, under the Indian Penal Code, together with abetments of or attempts to commit the same, have been classified as "heinous"—

Section 124-A.—Conspiring to commit certain offences against the State.

Sections 147 and 148—Rioting, and rioting armed with a deadly weapon, if more than ten are convicted in the case concerned.

All offences under Chapter XII, Indian Penal Code, relating to coin and Government stamps, except offences under sections 244, 245, 262, 263.

S. 370.—Buying or disposing of any person as a slave.

S. 371.—Habitual dealing in slaves.

S. 379.—Theft (if of cattle).

Ss. 384 to 389.—Extortion and aggravations thereof.

Ss. 392 to 394.—Robbery and aggravations thereof, if committed by a member of a caste or tribe known to be addicted to the crime.

Ss. 395 to 399.—Dakaiti and aggravations thereof.

Ss. 400 to 402.—Belonging to gangs of robbers or dakoits.

Ss. 411 to 414.—Receiving stolen property.

Ss. 428 and 429.—Mischief to animals.

Ss. 453 to 460.—Burglary and aggravations thereof, in cases where the sentence is not less than two years' rigorous imprisonment.

Ss. 471 to 476.—Forgery if relating to promissory notes or currency notes.

Explanation II.—A crime is said to be "organized" when it is committed by one or more of a body of persons associated for the purpose of committing such crime or crimes of a similar nature.

(2) The Magistrate shall determine the question by a reference to the record of the case, or by further inquiry if necessary.

4.—"For the award....sentences"—(Continued).

(3) The word "ordinary" where it first occurs in rule 15 refers to clauses (*a*) and (*b*) of rule 6. Marks under clause (*c*) should not be given unless an entry has been made in the history-ticket that this is to be done.

(*B*)—*Regarding the conditional release of dangerous criminals.*

Conditional release of dangerous criminals.

4. In accordance with the rule 4 of the mark rules the period of remission earned by—

(*a*) Thugs, robbers by administration of poisonous drugs, and professional, hereditary or specially dangerous criminals convicted of heinous organized crime, such as dakoiti, under sentence for a term of years;

(*b*) dakoits and other persons convicted of heinous organized crime, who are not professional, hereditary or specially dangerous criminals, whether under sentence for life or term shall be deducted from the sentence and shall be passed under police surveillance as hereinafter prescribed: provided that if the total remission earned does not exceed two months, the convict shall be released unconditionally.

5. At least one month previous to the release of such prisoner the Superintendent shall fill up an order in the form appended for the conditional release of the prisoner, and shall submit it direct to the Secretary to Government (Judicial Department) for orders. He shall at the same time inform the Magistrate of the district in which the prisoner's home is situate that he has done so, in order that the Magistrate may have time before the prisoner's release to decide the place where he will require under rule 10 the prisoner to reside.

6. If an order for conditional release is issued by the Government, the officer in charge of the Jail shall deliver to the prisoner a vernacular translation of the order of release, and shall require him to execute the agreement on the back of the order. The Superintendent shall then sign a certificate that the agreement has been executed.

7. If the prisoner is not to reside in the district in which the Central Prison is situated after the release has been sanctioned under rule 7, the Superintendent will arrange for the transfer of the convict under police escort to the District Jail of the district where the convict is to reside, so that he may arrive in that jail at least one day previous to the probable date of release. The original order of release shall be sent with the convict. In other cases the prisoner will be released on the proper day by the Superintendent of the Central Jail.

8. On the day for release the Superintendent of the Central Prison or the Superintendent of the District Jail to which the prisoner has been transferred under rule 8 will forward the convict with a descriptive-roll and a copy of the order of release (with date of release duly endorsed thereon) to the District Superintendent of Police or the Magistrate of the district, as the latter may by general rule direct. The original order of release will be retained by the Superintendent of the jail after release.

9. When the released convict is brought before the Magistrate of the district, the Magistrate shall either himself, or through the District Superintendent of Police, intimate to him the place at which he shall reside

4.—"For the award....sentences"—(*Continued*).

for the period of remission, the times and places at which, and the officer to whom, he shall periodically report himself. A written order containing the above particulars shall be given to the released convict, and if issued by the Magistrate himself, a copy shall be sent to the District Superintendent of Police.

10. A translation of the order of release and the order of the Magistrate or District Superintendent of Police shall be sent by the District Superintendent of Police to the officer in charge of the police-station within the limits of which the released convict will reside, who shall enter the man's name at once in the register of conditionally released prisoners, No. 10-B (appended).

11. The officer in charge of the police station shall ascertain from the chaukidar of the village concerned that the convict has taken up his residence at the prescribed place, and shall report to the District Superintendent of Police if he fails to do so within four days.

12. In the event of the released convict failing to take up his residence in the prescribed place, the District Superintendent of Police shall forward the descriptive-roll of his person, together with details of his crime, sentence, previous convictions, name of district in which he was imprisoned, the jail from which he was released, and date of release, for publication in the Police Gazette.

13. Convicts of class (*a*) shall ordinarily be required to report themselves at the police-station in the jurisdiction of which they reside once a month, and convicts of class (*b*) once a quarter.

14. Except to make his periodical report, or for a few hours during the day to attend market or transact other business, or when summoned or sent up as witness, a conditionally released convict shall not during the period of remission absent himself from the village within which he has been directed to reside without a pass granted by the District Superintendent of Police.

15. Convicts of class (*a*) shall not receive a pass for a longer period than 15 days, and convicts of class (*b*) for a longer period than one month at one time.

16. Any conditionally released convict applying for a pass shall state the places he proposes to visit, which shall then be entered on the pass.

17. Intimation shall be sent to the officers in charge of the police-stations in the jurisdiction of which such places are situated, and the released convict shall be required to report himself to the police officers in charge of such stations and obtain their signatures on his pass.

18. Omission to present himself on the part of the released convict shall be at once reported by the police officer concerned to the District Superintendent of Police issuing the pass.

19. If the Magistrate of the District permits the released convict to permanently change his place of residence, and the new place of residence is within the jurisdiction of a different police-station, a copy of the register (10-B) relating to him shall be forwarded to the officer in charge of such station.

4.—"For the award....sentences"—(Continued).

20. The register of conditionally released convicts (10B) will be maintained at all police-stations in the form appended. Remarks as to character, conduct and occupation will be made once a month by the officer in charge of the police-station in the case of convicts of class (*a*) and once a quarter in the case of convicts of class (*b*).

21. A close watch shall be kept over each conditionally released convict and any breach of the conditions of release shall be at once reported to the District Superintendent of Police by the officer in charge of the police-station.

22. Any convict detected in the commission of a breach of the conditions of his release shall be at once apprehended by the police and his case reported for the orders of the Magistrate, who may either detain the convict in custody, pending the orders of Government, or, if he considers detention unnecessary, may order the convict's release. In any case, he shall report his action for the information of Government which may direct that the convict's remission may be cancelled. The convict may thereupon, if he has been released by the Magistrate, be arrested without warrant by any police officer and remanded to undergo the unexpired portion of the sentence under section 410, Code of Criminal Procedure.

23. The Commissioner of Kumaun may, with the previous sanction of Government, permit such modification as he may find necessary in any of the rules in the districts of Almora and Garhwal.

Order for conditional remission of sentence under rule 4 (*a*) and (*b*) of the mark rules.

In exercise of the power conferred by section 401 of the Code of Criminal Procedure, 1898, the Lieutenant-Governor of the United Provinces of Agra and Oudh is pleased hereby to remit, subject to the conditions hereinafter set forth, the remainder, viz ,————————of the punishment awarded to————, son of————, caste————, and a convict at the————Prison of————, No.————, at present undergoing a sentence of————inflicted under section————of ————,which would expire on the————day of————19 .

The conditions which shall hold good during the period of remission are these:—

(1) that the said————will reside within the district of————at such place as the Magistrate of the district may from time to time direct, and will not go beyond the limits of such place without the permission of the Magistrate of the district or of such officer as the said Magistrate may appoint in this behalf;

(2) that he will report himself periodically at such time and place as may be prescribed by the Magistrate or District Superintendent of Police of the district in which he resides, unless the Magistrate of the district exempts him from making such report;

(3) that he will not commit in British India or in a native state any offence punishable by any law in force in British India;

(4) that he will not associate with notoriously bad characters or lead a dissolute life.

Judicial (Criminal) Department,
The————19 .

Secy. to Govt., U.P.
of Agra and Oudh.

4.—"For the award....sentences"—(Concluded).

I hereby accept and agree to abide by the above conditions, which have been explained to me and which I fully understand. I acknowledge that, should I fail to fulfil those conditions or any portion of them, I may be arrested by any police officer without warrant and remanded to undergo the unexpired portion of my original sentence.

(Signature or mark of the prisoner).

Certified that the foregoing conditions were read over to the prisoner and accepted by him, under section 401 of the Code of Criminal Procedure, in my presence.

Dated————19 . Superintendent, Prison.

Certified that the prisoner was released on the day of 19 , at

Dated————19 . Superintendent,————Jail.

Register of conditionally released prisoners—No. 10B.

Name.	Parentage.	Caste.	Original residence.	Description.	Offence for which sentenced, and date and period of sentence.	Date of release.	Present prescribed residence, with orders as to the time and place at which the convict shall periodically report himself.	Name and residence of relations.	Date and number of order of remission of sentence.	Date on which original sentence expires and the convict is relieved from reporting himself.	Date and hour of attendance for purpose of reporting.	Periods of authorized absence from home; number and date of District Superintendent's orders.	Remarks as to character, conduct and occupation (to be filled in in case of class (a) once a month, and in case of class (b) once a quarter.)
1	2	3	4	5	6	7	8	9	10	11	12	13	14

(3) **Madras.**

For rules by the Government of Madras under Ss. 59 and 60, see Madras Rules and Orders, (List in Vol. I.)

5.—"Regulating....escape."

(1) **The use of arms against any prisoner or a body of prisoners in the case of an outbreak or attempt to escape.**

1. Any officer of the prison may use a sword, bayonet, fire-arm or any other weapon against any prisoner escaping or attempting to escape: Provided that resort shall not be had to the use of any such weapon unless such officer has reasonable ground to believe that he cannot otherwise prevent the escape.

2. Any officer of the prison may use a sword, bayonet, fire-arm or any other weapon on any prisoner engaged in any combined outbreak or in any attempt to force or break open the outer gate or enclosure wall of the prison and may continue to use such weapon so long as such combined outbreak or attempt is being actually prosecuted.

3. Any officer of the prison may use a sword, bayonet, fire-arm or any other weapon against any prisoner using violence to any of the prisoners or other persons: Provided that such officer has reasonable ground to believe that the officer of the prison or other person is in danger to life or limb, or that other grievous hurt is likely to be caused to him.

4. Before using fire-arms against a prisoner under the authority conveyed in rule (1), the officer of the prison shall give a warning to the prisoner that he is about to fire on him.

5. No officer of the prison shall, in the presence of his superior officer, use arms of any sort against a prisoner in the case of an outbreak or attempt to escape except under the orders of such superior officer.

See General Statutory Rules and Orders, Vol. III. **L**

(2) **Burma.**

For rules made by the Government of—under cl. (6), see Burma Gazette, 1908 Pt. I, p. 496. **M**

6.—"Defining....released."

Rules under.

For—cl (7) made for

(i) Assam, see Assam Jail Manual;

(ii) Punjab, see Punjab List of Local Rules and orders; and

(iv) for Coorg under clauses (5) and (7), see Coorg Rules and Orders, (List). **N**

7.—"Generally....Act."

Rules by the Government of Bengal.

For————as to attendance at a Civil Court of civil prisoners, see Bengal Statutory Rules and Orders Vol. II. **O**

Power of Local Government to make rules.

60. The Local Government may, subject to the control of the Governor-General in Council, make rules [1] consistent with this Act—

(*a*) for the classification of prisons, and description and construction of wards, cells and other places of detention;

(*b*) for the regulation by numbers, length or character of sentences, or otherwise, of the prisoners to be confined in each class of prisons;

(*c*) for the government of prisons and for the appointment, guidance, control, punishment and dismissal of all officers appointed under this Act;

(*d*) as to the food, bedding and clothing of criminal prisoners and of civil prisoners maintained otherwise than at their own costs;

(*e*) for the employment, instruction and control of convicts within or without prisons;

(*f*) for defining articles the introduction or removal of which into or out of prisons without due authority is prohibited [2];

(*g*) for classifying and prescribing the forms of labour and regulating the periods of rest from labour;

(*h*) for regulating the disposal of the proceeds of the employment of prisoner;

(*i*) for regulating the confinement in fetters of prisoners sentenced to transportation;

(*j*) for the classification and the separation of prisoners [3];

(*k*) for regulating the confinement of convicted criminal prisoners under section 28;

(*l*) for the preparation and maintenance of history-tickets;

(*m*) for the selection and appointment of prisoners as officers of prisons;

(*n*) for rewards for good conduct;

(*o*) for regulating the transfer of prisoners whose term of transportation or imprisonment is about to expire;

(*p*) for the treatment, transfer and disposal of criminal lunatics or recovered criminal lunatics confined in prisons;

(*q*) for regulating the transmission of appeals and petitions from prisoners and their communications with their friends;

(*r*) for the appointment and guidance of visitors of prisons [4];

[5] (*s*) for extending any or all of the provisions of this Act and of the rules thereunder to subsidiary jails or special places of confinement appointed under section 541 of the Code of Criminal Procedure, 1882, and to the officers employed, and the prisoners confined, therein; and,

(*t*) generally, in regard to the admission, custody, employment, dieting, treatment and release of prisoners, and for other purposes consistent with this Act [6].

(Notes).

1.—"Rules."

(1) **Rules regarding Government prisons in the Central Provinces.**

For———made under Act XXVI of 1870, and kept in force by this Act, see Central Provinces List of Local Rules and orders.

(2) **Rules for the management and superintendence of jails:—**

For———,

(i) in Bengal, see Bengal Statutory Rules & Orders Vol. II.

(ii) Madras Presidency, see Madras Local Rules and Orders Vol. I. and for a Notification prescribing a new jail Code, see *Ibid.*

(iii) Coorg, See Coorg, Rules and Orders. and

(iv) Punjab, see Punjab List of Local Rules and Orders.

2.—"For defining....prohibited."

Notification by the Government of the United Provinces under cl. (f).

For———. see United Provinces, List of Local Rules and Orders, Vol. I. Q

3.—"For....prisoners."

Rules for the classification and treatment of prisoners.

For———by

(i) the Chief Commissioner, Andaman and Nicobar Islands, see Andaman and Nicobar Gazette, 1902, p. 343.

3.—"For....prisoners"—(Concluded).

(ii) Under Bombay Act II of 1874, which is kept in force by this Act, see Bom. List of Local Rules and Orders, Vol. I. and by

(iii) the Government of the Punjab as to prisoners sentenced under the Murderous Outrageous Regulations 1901 (IV of 1901), see Punjab Gazette, 1903, Pt. I. p. 104. R

4.—"For the appointment....prisons."

(1) **Rules under clause (r).**

For————for Burma, see Burma Gazette, 1898, Pt. I, p. 62; *ibid*, 1899 Pt. I, p. 563. S

(2) **Rules under clause (*r*) and (*t*).**

For———— for the Bombay Presidency, see Bombay Government Gazette, 1900, Pt. I, p. 2405. T

5.—"Cl. S."

Instance of a notification issued under this clause.

For————, see United Provinces List of Local Rules and Orders, Vol. I. U

6.—"Generally....Act."

S. 541, Cr.P.C., 1882—Act V of 1871 (prisoners)—Different jails—Jurisdiction.

There is no law empowering a Criminal Court, passing a sentence of imprisonment, to divide the imprisonment between different jails. It would seem from S. 541, Cr. P. C., 1882, S. 60 (*t*) of the Prisons Act, 1894, and Prisoners Act, 1871, that this power belongs to the Local Government and the Inspector-General of Prisons. Rat. Unrep. Cr. Cas. 827. V

Exhibition of copies of rules.

61. Copies of rules under sections 59 and 60, so far as they affect the government of prisons, shall be exhibited, both in English and in the Vernacular, in some place to which all persons employed within a prison have access.

Exercise of powers of Superintendent and Medical Officer.

62. All or any of the powers [1] and duties conferred and imposed by this Act on a Superintendent or Medical Officer may in his absence be exercised and performed by such other officer as the Local Government may appoint in this behalf either by name or by his official designation.

(Note).

1.—"Powers."

Notification empowering certain officers in Burma.

For————to perform the duties of a Superintendent of a jail during his absence, see Burma Gazette, 1908, Pt. I, p. 134. W

THE SCHEDULE.

ENACTMENTS REPEALED.

(*See section 2.*)

Year.	No.	Title or short title.	Extent of repeal.
1	2	3	4
		Acts of the Governor-General in Council.	
1856	VIII	An Act for the better control of the jails within the Presidency of Bombay.	So much as has not been repealed.
1870	XXVI	Prisons Act, 1870.	So much as has not been repealed.
1874	XV	Laws Local Extent Act, 1874.	So much of Part (*b*) of the third schedule as relates to Act VIII of 1856.
1878	XIV	An Act to assimilate certain powers of the Local Governments of the North-Western Provinces and Oudh.	Section 2.
*	*	* *	*
1891	XII	Repealing and Amending Act, 1891.	So much of the second schedule as relates to Acts VIII of 1856 and XXVI of 1870.
		Acts of the Governor of Fort St. George in Council.	
1869	V	Madras Jails Act, 1869.	So much as has not been repealed.
1882	VII	Madras Jails Act Amendment Act, 1882.	The whole.
1889	II	An Act to amend the Madras Jails Act, 1869.	The whole.
		Acts of the Governor of Bombay in Council.	
1874	II	An Act for the regulation of Jails in the City and Presidency of Bombay, and the enforcement of discipline therein.	So much as has not been repealed, except sections 9 to 16 (both inclusive) as amended by Bombay Act II of 1882.
1882	IV	An Act to amend, Bombay Act II of 1874.	Section 3.

THE SCHEDULE.—(*Concluded*).

Year.	No.	Title or short title.	Extent of repeal.
1	2	3	4
		Acts of the Governor of Bombay in Council—(Concluded).	
1883	IV	An Act to amend the Law concerning the confinement of civil prisoners liable to imprisonment under the Criminal Procedure Code.	The whole.
1887	I	An Act to further amend Bombay Act II of 1874.	The whole.
		Acts of the Lieutenant-Governor of Bengal in Council.	
1864	II	An Act for the regulation of Jails and the enforcement of discipline therein.	So much as has not been repealed.
1865	V	An Act to amend Act II of 1864, passed by the Lieutenant-Governor of Bengal in Council, and to extend the provisions thereof to the Presidency Jail.	So much as has not been repealed.
		Regulations made under the Statute 33 Victoria, Chapter 3.	
1872	III	Santhal Parganas Settlement Regulation.	So much of the schedule (as amended by Regulation III of 1886) as relates to Bengal Acts II of 1864 and V of 1865
1874	IX	Arakan Hill District Laws Regulation, 1874.	So much as relates to Act XXVI of 1870
1875	II	Assam Prisons Regulation, 1875.	The whole.
1890	I	British Baluchistan Laws Regulation, 1890.	So much as relates to Act XXVI of 1870.

APPENDIX.

Bombay Act II of 1874.

[SECTIONS 9—16].

Civil jail to be at seat of each District Court, and may be at other places.

9. There shall be a Civil jail at the seat of the District Court for each district created under section 3 of Act XIV of 1869: Provided that it shall be in the power of the Governor in Council to establish civil jails at other convenient places.

Nazir of District Court to be keeper of civil jail and to have establishment under him.

10. The nazir of the District Court or of the chief Civil Court at the place where the civil jail is located shall be *ex officio* keeper of the civil jail, and shall be responsible for the safe custody of the prisoners and for the preservation of cleanliness and good order in the jail and among the prisoners, and shall have such establishment under him as the District Judge, with the sanction of the Governor in Council, may direct.

11. The Judge or the Assistant Judge of the district in which a civil jail is situated shall visit such civil jail at least once in each month, and shall issue in writing such orders connected with the economy of the jail, the good management, health and accommodation of the prisoners, as he may think fit.

Judge to visit civil jail.

He shall record the date of his visit, and any remarks he may have to make, in a book to be kept for the purpose.

12. A medical officer to be appointed by the Governor in Council shall attend the civil jail, and shall be bound to offer such advice to the District Judge. or other officer in charge of the civil jail, as may seem expedient to him with regard to the sanitary state of the jail and of the prisoners.

Medical officer to attend jail.

He shall also administer remedies at the expense of the Government to the sick: Provided that nothing contained in this section shall prevent a prisoner in a civil jail from employing at his own expense any medical man he may think fit to consult.

Remedies administered at expense of Government.

13. The civil jail shall be opened daily for the admission of those wishing to visit prisoners from 9 A.M. till 3 P.M., and no stranger shall be allowed to remain in the civil jail beyond the above mentioned hours except by permission of the Judge, the Assistant Judge of the district, or on the recommendation of the medical officer by the permission of the nazir in charge of the jail.

Strangers may be admitted to civil jail.

14. Clause 1.—Prisoners in the civil jail may either make their own arrangements for their subsistence, or may, within the amount of subsistence-money or batta furnished by the party at whose suit they are detained, require the nazir to furnish their food and other necessaries out of the subsistence-money fixed for them by the Court by which they are committed: provided that excess in the use of intoxicating liquors or drugs be strictly prohibited.

Subsistence of prisoners in civil jails.

A tariff of prices approved by the District Judge on the first day of each month shall be kept in each civil jail and shall be accessible to all the prisoners.

Clause 2.—Every Civil prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the nazir with such clothing and bedding as may be ordered by the Judge or Assistant Judge under the provisions of section 11 of this Act.

When any such prisoner has been committed to prison in execution of a decree in favour of a private person, such person, or his representative, shall be liable to pay to the nazir on demand in writing the cost of the clothing and bedding so supplied to the prisoner; and in default of such payment the prisoner shall be released.

15. Whenever a prisoner shall die in the civil jail, the nazir shall immediately report such death to the nearest Magistrate, who shall thereupon inquire into the cause of such death, and make a written report thereon to the Inspector-General of Prisons, and the corpse of such prisoner shall, after the medical officer appointed under section 12 has certified to his death, be made over to his relatives or friends if any be present and willing to take charge of it.

Disposal of corpse of prisoner dying in civil jail.

If no relative or friend of a prisoner who has died in prison is present and willing to receive and dispose of his corpse, it shall be buried, burnt or otherwise disposed of.

Disposal of subsistence-money in hand on prisoner's death or release.

16. If, at the time of a prisoner's death or release, any of the subsistence-money furnished by the party at whose suit such prisoner was detained remains unexpended, notice shall be forthwith given to the party paying the same, and the balance so remaining unexpended shall be returned to such party or his representatives: Provided that he or they claim payment thereof within three months from the date of such notice; failing which such balance shall become the property of the Government.

Cost of disposing of corpses and other expenses connected with civil jail to be provided by Government.

The cost of disposing of the corpses of deceased prisoners under clause 2 of the last preceding section, and of procuring comforts for sick prisoners, and generally for the maintenance of the civil jail, shall be provided by Government subject to such rules as Government may from time to time prescribe in this behalf.

THE PRISONS ACT, 1894.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this volume and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S. in Brevier Roman denotes the section.

A

Accommodation, of prisoners, S. 4, **9**.

Temporary, for prisoners, S. 7, **10**.

Act, Title of the, S. 1, **7**.

Commencement of the, S. 1, **7**.

Extent of the, S. 1, **7**.

Act V of 1871, See PRISONERS ACT.

Act X of 1882, See CRIM. PRO. CODE.

Admission, Prisoners to be examined on, S. 24, **14**.

Angul, Act declared to be in force in the district of, *C*, **7**.

Arrest, Power to arrest for offence under S. 42, S. 43, **19, 20**.

Assistant Jailer, See JAILER.

Association, of prisoners, S. 28, **15**.

B

Bedding, to certain prisoners from private sources, S. 31, **16**.

Supply of, to civil and convicted criminal prisoners, S. 33, **16**.

See RULES.

Bombay, See RULES.

British Baluchistan, Act extends to, S. 1, **7**.

C

Civil Jails, Rules for control and management of, *F*, **27**.

See JAILS.

Civil prisoners, Definition, S. 3 (4), **9**.

Maintenance of, from private sources, S. 31, **16**.

Supply of clothing to, S. 33, **16**.

Release of, on failure to pay cost of clothing and bedding, S. 33 (2), **16**.

Employment of, S. 34 (1), **16**.

Right to receive earnings, S. 34 (2), **16**.

Visit to, S. 40, **18**.

Classification, of punishments, **31**.

See RULES.

Classification of prisons, See RULES.

Clothing, to certain prisoners from private sources, S. 31, **16.**
Supply of, to civil and convicted criminal prisoners, S. 33, **16.**
See RULES.
See TRANSFER OF CLOTHING.
Communication, Penalty for, with prisoners, S. 42, **18.**
Confinement, of prisoners in irons, S. 56, **27.**
of prisoners under sentence of transportation in irons, S. 57, **27.**
Control, of officers of prisons, S. 8, **10.**
Extramural, of prisoners, S. 55, **27.**
of convicts, S. 60 (*e*), **42.**
Convicted criminal prisoner, Definition of, S. 3 (3), **9.**
Convict officers, are public servants, S. 23, **14.**
Criminal Prisoners, Definition of, S. 3 (2), **8.**
Supply of clothing to, S. 33, **16.**
Employment of, S. 35 (1), **17.**
Employment of, sentenced to simple imprisonment, S. 36, **17.**
Visit to unconvicted, S. 40, **18.**
Cr. P.C. 1882, S. 541—Different jails—Jurisdiction, *V*, **44.**
Custody, Extramural, of prisoners, S. 55, **27.**

D

Dangerous criminals, Rules regarding release of, **37—39.**
Death of prisoner, Report of medical officer on, S. 15, **12.**
Jailer to give notice of, S. 17, **13.**
Coroner to be sent for on, *M*, **13.**
Deputy Jailer, See JAILER.
Discharge, of prisoners, S. 26, **14.**
Duties, of officers of prisons, S. 8, **10.**

E

Employment, of civil prisoners, S. 34, **16.**
of criminal prisoners, S. 35, **17.**
of criminal prisoners sentenced to simple imprisonment, S. 36, **17.**
Extramural, of prisoners, S. 55, **27.**
of convicts, S. 60 (*e*), **42.**
Entries, in punishment-books, S. 51, **25.**
Escape of prisoners, Power of Superintendent to convict watchman for aiding, *E*, **27.**
Extramural, See CUSTODY.

F

Female prisoners, Search and examination of, on admission, S. 24, **14.**
Food, to certain prisoners from private sources, S. 31, **16.**
Taking food to an under-trial prisoner, *N*, **19.**
See RULES.
See TRANSFER OF FOOD.

G

Gate-keeper, Duties of, S. 21, **13, 14**

Government of prisons. See RULES.

H

Handcuffs, Imposition of, *S*, *W*, **23.**

Prisoner undergoing punishments in, to be under complete shelter from the sun, *X*, **23.**

Havalat, Whether a prison, *G*, **9.**

Heinous offence, Procedure on committal, S. 52, **26.**

History ticket, Definition, S. 3 (6), **9.**

Hospital, Provision for, in prisons, S. 39, **18.**

I

Imposition, of handcuffs, *S—W*, **23.**

of fetters, *Y—C*, **23.**

Imprisonment, Employment, of criminal prisoners sentenced to simple, S. 36, **17.**

Inspector-General, Definition, S. 3 (7), **9.**

Appointment and powers of, S. 5, **10.**

Instruction, of convicts, S. 60 (*e*), **42.**

Introduction, Penalty for, of prohibited articles into or from prison, S. 42, **18.**

Irons, Confinement in, S. 56, **27.**

Confinement of prisoners under sentence of transportation in, S. 57, **27.**

Prisoners not to be ironed by jailer except under necessity, S. 58, **28.**

J

Jailer, A necessary officer of prison, S. 6, **10.**

Residence of the, S. 16 (1), **13.**

not to be concerned in any employment, S. 16 (2), **13.**

to give notice of death of prisoner, S. 17, **13.**

Responsibility of, S. 18, **13.**

not to be absent from the prison at night, S. 19, **13.**

Powers of Deputy and Assistant, S. 20, **13.**

not to iron the prisoners except under necessity, S. 58, **28.**

Jails, Act not applicable to civil, in the Presidency of Bombay outside the City of Bombay, S. 1, **7.**

Rules for the management and Superintendence of, in Madras, *E*, **8.**

Rules for the management and superintendence of, **43.**

Jurisdiction, See PRISONER'S ACT.

L

Laburing prisoners, Weight of, to be recorded on history ticket, S. 35 (2), **17.**

not to be employed on labour if the health of the prisoner has suffered from employment, S. 35 (3), **17.**

Lock up, Whether a prison, *G—I*, **9.**

Loss of privileges, admissible under remission system for prison offences, *R*, **22, 23.**

M

Madras, See RULES.
Maintenance, of certain prisoners from private sources, S. 31, **16**.
Mark-rules, See RULES.
Marks, See RULES.
Medical officer, A necessary officer of prison, S. 6, **10**.
to report in certain cases, S. 14, **12**.
to record certain particulars on death of prisoner, S. 15, **12**.
Duties of, S. 13, **12**.
Rules as to duties of, *K*, *L*, **12**.
to examine the labouring prisoners while they are employed, S. 35 (2), **17**.
Record of directions of, S. 38, **18**.
to certify to fitness of prisoner for punishment, S. 50, **25**.
Exercise of powers of, S. 62, **44**.
Medical subordinate, Definition, S. 3 (8), **9**.
A necessary officer of prison, S. 6, **10**.
Prisoners desiring to see, to be reported to jailer, S. 37 (1), **17**.
Jailer to call the attention of, to prisoner desiring to see him, S 37 (2), **17**.
Record of direction of, S. 38, **18**.

N

Night, Jailer to be present in the prison at night, S. 19, **13**.
Notice, Jailer to give notice of death of prisoner, S. 17, **13**.

O

Offences, in relation to prisons, Ss. 42—44, **18**– **20**.
under S. 42—Power to arrest for, S. 43, **19**, **20**.
by prison subordinates, S. 54, **26**, **27**.
See PRISON OFFENCE.
Officers, of prisons, S. 6, **10**.
not to be interested in prison—Contracts, S. 10, **11**.
of prisons not to have business dealings with prisoners, S. 9, **11**.

P

Penalty, for introduction of prohibited articles into or from prisons, S. 42, **18**, **19**.
for removal of prohibited articles into or from prison, S. 42, **18**, **19**.
for communicating with prisoners, S. 42, **19**.
Publication of, S. 44, **20**.
Paragana of Spiti, Act extends to, S. 1, **7**.
Prison, Definition of, S, 3 (1), **8**.
whether hawalat or lock up a, *G—I*, **9**.
Prison—Contract, Officers of prisons not to be interested in, S, 10, **11**.
Prisoner, See CIVIL PRISONER, uncovenanted criminal prisoner.
Prisoners, See IRONS.
See PENALTY.
See RELEASED PRISONERS.

Prisoners—(Concluded).

Accommodation of, S. 4, **9**.

Officers not to have business dealings with, S. 9, **11**.

to be examined on admission, S. 24, **14**.

Effects of, to be placed in the custody of jailer, S. 25, **14**.

Removal and discharge of, S. 26, **14**.

under sentence of death to be searched, S. 30 (1), **15**.

Confinement of, under sentence of death, S. 30 (2), **15**.

Separation of, S. 27, **15**.

Association and segregation of, S. 28, **15**.

Penalty for communication with, S. 42, **19**.

Extramural custody, control and employment of, S. 55, **27**.

Confinement of, in irons, S. 56, **27**.

Confinement of under sentence of transportation in irons, S. 57, **27**.

Prisoners Act (*V of 1871*), Different jails, *V*, **44**.

Prison offences, What are, S. 45, **20**, **21**.

Punishment for, S. 46, **21**.

Punishment for involving loss of privileges admissible under remission system, *R*, **22**, **23**.

Acts constituting, *G*, **29**, **30**.

See RULES.

Prisons, Officers of, S. 6, **10**.

Offences in relation to, Ss. 42—44, **18**—**20**.

See RULES.

Prison subordinates, Offences by, S. 54, **26**, **27**.

Procedure, on committal of heinous offence, S. 52, **26**.

Prohibited article, Definition, S. 3 (9), **9**.

Prohibited articles, Penalty for introduction of, into or from prison, S. 42, **18**.

Penalty for removal of, into or from prison, S. 42, **18**.

Publication, of penalties, S. 44, **20**.

Punishment, of whipping, *P*, **19**.

for prison offences, S. 46, **21**.

Punishment-books, Entries in, S. 51, **25**.

Punishments, for prison offences involving loss of privileges admissible under remission system, *R*, **22**, **23**.

Plurality of, under, S. 46, S. 47, **24**.

Power of Superintendent to award, under, Ss. 46—57, S. 48, **24**.

to be in accordance with S. 48, S. 49, **25**.

Classification of, **31**.

Minor, 1—14, **31**.

Major, 1—12, **31**.

R

Records, to be kept by Superintendent, S. 12, **11**.

Register, of conditionally released prisoners, **40**.

Release, Rules regarding conditional, of dangerous criminals, **37—39.**

Released prisoners, Register of conditionally, **40.**

Remission system, Definition, S. 3 (5), **9.**

See PRISON OFFENCES.

Removal, of prisoners, S. 26, **14.**

Penalty for, of prohibited articles into or from prison, S. 42, **18.**

Repeal, Extent of, S. 2, **8.**

Report, of Medical officer on death of prisoner, S. 15, **12.**

of Medical officer if the mind of the prisoner be injuriously affected, S. 14, **12.**

Rules, for the management and superintendent of jails in Madras, *E*, **8.**

for the classification and treatment of prisoners in Bombay, *F*, **8.**

for control and management of Civil jails, *F*, **27.**

Power of Governor-General-in-Council to make, S. 59, **28.**

defining acts constituting prison offences, S. 59 (1), **28.**

determining classification of prison offences, S. 59 (2), **28.**

fixing punishments under the Act, S. 59 (3), **28.**

declaring circumstances in which acts constituting both a prison offence and an offence under I.P.C., may be dealt with as prison offence, S. 59 (4), 28, *H*, *I*, **32.**

regulating release of prisoners in danger of death, S. 59 (7), 28, *N*, **41.**

regulating transfer of prisoners, S. 59, (8), **28.**

for the award of marks and shortcoming of sentences, S. 59 (5), 28 ; and **32—35.**

regulating the use of arms, S. 59 (6), 28, *L*, *M*, **41.**

Explanatory of mark rules, **36.**

regarding the conditional release of dangerous criminals, **37- 39.**

Power of Local Government to make, S. 60, **41—43.**

for the preparation and maintenance of history tickets, S. 60 (*l*), **42.**

for appointment of prisoners as officers of prisons, S. 60 (*m*), **42.**

as to food, bedding and clothing, S. 60 (*d*), **42.**

for the employment, instruction and control of convicts, S. 60 (*e*), **42.**

defining prohibited articles, S. 60 (*f*), **42.**

classifying and prescribing forms of labour, S. 60 (*g*), **42.**

regulating the disposal of the proceeds of the employment of the prisoner, S. 60 (*h*), **42.**

regulating confinement in fetters of prisoners sentenced to transportation, S. 60 (*i*), **42.**

for the classification and separation of prisoners, S. 60 (*j*), **42.**

regulating confinement of convicted criminal prisoners under S. 28, S. 60 (*k*), **42.**

for rewards for good conduct, S. 60 (*n*), **42.**

for transfer of prisoners, S. 60 (*o*), **42.**

for treatment, of criminal lunatics, S. 60 (*p*), **43.**

for transmission of appeals and petitions from prisoners, S. 60 (*g*), **43.**

extending provisions of the Act to subsidiary jails, S. 60 (*s*), **43.**

for the classification of prisons and description and construction of places of detention, S. 60 (*a*), **42.**

Rules—(Concluded).

for the regulation of sentences, S. 60 (*b*), **42.**

for the Government of prisons, S. 60 (*c*), **42.**

regarding Government prisons in the Central Provinces, **43.**

for the management and superintendence of jails, **43.**

in regard to admission, custody, etc., of prisoners, S. 60 (*t*), **43.**

for appointment and guidance of visitors. S. 60 (*r*), 43.

for the classification and treatment of prisoners, *R*, **43, 44.**

Exhibition of copies of, S. 61, **44.**

S

Search, of prisoners on admission, S. 24, **14.**

of prisoners under sentence of death, S. 30 (1), **15.**

of visitors, S. 41, **18.**

Segregation, of prisoners, S. 28, **15.**

Sentences, Shortcoming of, *J*, **32—35.**

Separation, of prisoners, S. 27, **15.**

of prisoners, S. 60 (*j*), **42.**

Sick prisoners, to be reported to the jailer, S. 37 (1), **17.**

Jailer to call the attention of Medical Subordinate about, S. 37 (2), **17.**

Solitary confinement, Cell to be used for, S. 29, **15.**

Sonthal Parganas, Act extends to, S. 1, **7.**

Subordinate officers, not to be absent without leave, S. 22, **14.**

Superintendent, a necessary officer of prison, S. 6, **10.**

Management of prison by, S. 11, **11.**

Records to be kept by, S. 12, **11.**

Power of, of jail to convict watchman for aiding escape of prisoners, *E*, **27.**

Exercise of powers of, S. 62, **44.**

T

Transfer of clothing, Restriction on, between certain prisoners, S. 32, **16.**

Transfer of food, Restriction on, between certain prisoners, S. 32, **16.**

Transportation, See CONFINEMENT.

Treatment, of prisoners, *R*, **43, 44.**

U

Uncovenanted criminal prisoner, Maintenance of, from private sources, S. 31, **16.**

Under-trial prisoner, Taking food to an, *N*, **19.**

Upper Burma, Act declared in force in, *A*, **7.**

V

Visitors, Search of, S. 41, **18.**

W

Whipping, Punishment of, *P*, **19.**

not to be inflicted in instalments, S. 53 (1), **26.**

to be inflicted with a light rattan, S. 53 (2), **26.**

THE LAWYER'S COMPANION SERIES.

THE

INDIAN EXPLOSIVES ACT, 1884

(ACT IV OF 1884).

(WITH THE CASE-LAW THEREON)

BY

T. V. SANJIVA ROW,

FIRST GRADE PLEADER, TRICHINOPOLY.

(AUTHOR OF A "DIGEST OF PRIVY COUNCIL RULINGS"
THE "CURRENT INDEX OF INDIAN CASES,"
THE "LAWYER'S REFERENCE,"
AND
THE "INDIAN EVIDENCE ACT.")

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THE INDIAN EXPLOSIVES ACT, 1884.

TABLE OF CASES NOTED IN THIS VOLUME.

				PAGE.
8 P R 1910 (Cr)	...	The Crown v. Bansidhar	...	20
1 Weir 756	...	Saminatha Pillai, *In re*	...	21
U B R (1897-1901) Vol I 193	...	Queen-Empress v. Nga Ye	...	21

THE INDIAN EXPLOSIVES ACT, 1884.

CONTENTS.

SECTIONS.

1. Short title.
   Local extent.
2. Commencement.
3. [*Repealed.*]
4. Definitions.
5. Power to make rules as to licensing of the manufacture, possession, use, sale, transport and importation of explosives.
6. Power for Governor General in Council to prohibit the manufacture, possession or importation of specially dangerous explosives.
7. Power to make rules conferring powers of inspection, search, seizure, detention and removal.
8. Notice of accidents.
9. Inquiry into accidents.
10. Forfeiture of explosives.
11. Distress of vessel.
12. Abetment and attempts.
13. Power to arrest without warrant persons committing dangerous offences.
14. Saving for manufacture, possession, use, sale, transport or importation by Government.
15. Saving of Indian Arms Act, 1878.
16. Saving as to liability under other law.
17. Extension of definition of "explosive" to other explosive substances.
18. Procedure for making, publication and confirmation of rules.

THE

INDIAN EXPLOSIVES ACT, 1884.

(ACT IV OF 1884)[1].

[*26th February, 1884.*]

An Act to regulate the manufacture, possession, use, sale, transport and importation of Explosives.

WHEREAS it is expedient to regulate the manufacture, possession, use, sale, transport and importation of explosives; It is hereby enacted as follows:—

(Note).

1.—"Act IV of 1884."

Places where Act, declared to be in force.

This Act, has been declared to be in force under S. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874) in the Districts of:—

Hazaribagh;
Lohardaga (now called the Ranchi District).
Palaman.
Manbhoom.
In Pargana Dhalbhum.

In the Singbum District of the Chota Nagpur Division—The Kolhan.

(See Gazette of India, 1896, Part I, p. 972).

The Act has been applied to the Santhal Paraganas under S. 3 of the Santhal Parganas Settlement Regulation (III of 1872) as amended by the Santhal Parganas Laws Regulation 1886 (III of 1886). (See, Calcutta Gazette, 1891, Part I, p. 222.)

The Act has now been declared to be in force in the Santhal Parganas by S. 3 of Reg. III of 1872, as amended by S. 3 of Reg. III of 1899, Ben. Code.

The Act has been declared in force in Upper Burma (except the Shan States). See the Burma Laws Act, 1898, (XIII of 1898), S. 4 (1) and Sch. I Bur. Code).

It had previouly been extended there under S. 5, Act XIV of 1874--See Gazette of India, 1888, Pt. I, p. 539 and was declared to come into force on the 19th Feb., 1899. See Bur. Rules Manual. **A**

Short title.

1. (1) This Act may be called the Indian Explosives Act, 1884, and

Local extent.

(2) It extends to the whole of British India.

Commencement.

2. (1) This Act shall come into force on such day [1] as the Governor General in Council, by notification in the Gazette of India, appoints:

[2] (2) . . . . . .

(Notes).

1.—"This Act....day."

Date of operation of Act.

The Act came into force on the 1st July, 1887. (See Gaz. of India, 1887, Pt. I, p. 307). **A1**

2.—"Sub-Sec. (2)."

Legislative change.

Sub-Sec. (2) was repealed by the Repealing and Amending Act 1891 (XII of 1891). **A2**

[1] **3.** [*Repeal of portions of Act XII of 1875.*] *Rep. by Act X of 1889.*

(Note)

1.—"Sec. 3."

Legislative change.

Repealed by the Indian Ports Act, 1908 (XV of 1908). **A3**

Definitions.

4. In this Act, unless there is something repugnant in the subject or context,—

(1) "explosive [1]"—

(*a*) means gunpowder, nitro-glycerine, dynamite, gun-cotton, blasting powders, fulminate of mercury or of other metals, coloured fires and every other substance, whether similar to those above mentioned or not, used or manufactured with a view to produce a practical effect by explosion, or a pyro-technic effect; and

(*b*) includes fog-signals, fireworks, fuzes, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined:

(2) "manufacture" includes the process of dividing into its component parts, or otherwise breaking up or unmaking, any explosive, or making fit for use any damaged explosive, and the process of re-making, altering or repairing any explosive:

(3) "vessel" includes every ship, boat and other vessel used in navigation, whether propelled by oars or otherwise:

(4) "carriage" includes any carriage, wagon, cart, truck, vehicle or other means of conveying goods or passengers by land, in whatever manner the same may be propelled;

(5) "master" includes every person (except a pilot or harbour master) having for the time being command or charge of a vessel: provided that, in reference to any boat belonging to a ship, "master" shall mean the master of the ship:

(6) "import" means to bring into British India by sea or land.

(Note).

I.—"Explosive."

Authorized explosives.

For a list of—see Gaz. of India, 1905, Pt. II, p. 1112; 1908, p. 413. See Government of India Notification No. 385, dated 3rd March, 1910. B

Power to make rules as to licensing of the manufacture, possession, use, sale, transport and importation of explosives.

5. (1) The Governor General in Council may for any part of British India, and each Local Government, with the previous sanction of the Governor General in Council, may for any part of the territories under its administration, make rules consistent with this Act to regulate or prohibit, except under and in accordance with the conditions of a license granted as provided by those rules, the manufacture, possession, use, sale [1], transport and importation of explosives [2], or any specified class of explosives.

(2) Rules under this section may provide for all or any of the following, among other matters, that is to say:—

(*a*) the authority by which licenses may be granted;

(*b*) the fees to be charged for licenses, and the other sums (if any) to be paid for expenses by applicants for licenses [3];

(*c*) the manner in which applications for licenses must be made, and the matters to be specified in such applications;

(*d*) the form in which, and the conditions on and subject to which, licenses must be granted;

(*e*) the period for which licenses are to remain in force; and

(*f*) the exemption absolutely or subject to conditions of any explosives from the operation of the rules.

(3) The authority making rules under this section may by the rules impose penalties on all persons manufacturing, possessing, using, selling, transporting or importing explosives in breach of the rules, or otherwise contravening the rules:

Provided that the maximum penalty which may be imposed by any such rules shall not exceed—

(*a*) in the case of a person so importing or manufacturing an explosive, a fine which may extend to three thousand rupees;

(*b*) in the case of a person so possessing, using or transporting an explosive, a fine which may extend to one thousand rupees;

(*c*) in the case of a person so selling an explosive, a fine which may extend to five hundred rupees; and

(*d*) in any other case, two hundred rupees.

(Notes).

1.—" Rules....sale. "

A.—RULES UNDER THE EXPLOSIVES ACT, 1884, FOR THE MANUFACTURE, POSSESSION, AND SALE OF EXPLOSIVES.

CALCUTTA, THE 29TH NOVEMBER, 1906.

No. 9045—8—In exercise of the powers conferred by Ss. 5 & 7 of the Indian Explosives Act, 1884 (IV of 1884), the Governor-General-in-Council is pleased to make the following rules to regulate the *manufacture, possession and sale of explosives in British India.*

All rules heretofore made by the Governor-General-in-Council or any Local Government under the said Act, for regulating the manufacture, possession or sale of explosives are hereby cancelled, except rules of the kind referred to in cl. (2) of Rule 1 of the present rules. C

PRELIMINARY.

1. **General exemptions.**

These rules shall not apply to—

(1) the *Manufacture, possession, or sale of gunpowder* in any of the Agency tracts in the Ganjam, Vizagapatam, and Godaveri Districts of the Presidency of Madras, or

(2) the possession of any explosive in any port in which the special rules by the Local Government under the Explosives Act, 1884 (IV of 1884), for regulating the possession of explosives, are for the time being in force. D

[**N.B.**—Further exemptions are made by S. 14 of the Indian Explosives Act, 1884.]

(2—9) (both inclusive).

For—, see 1—8 (both inclusive), under " Preliminary " in the *Rules to regulate the transport and importation of explosives*, noted *infra*. E

LICENSES WHEN REQUIRED.

(10) License when required for manufacture.

(1) An explosive shall not be manufactured except under and in accordance with the condition of, a license granted under these rules for such manufacture.

(2) Provided that cl. (1) of this rule shall not apply—

(*a*) to the making of a small quantity of an explosive for the purpose of chemical experiment and not for practical use or for sale; or

(*b*) to the filling for private use, and not for sale, of any safety cartridges to the amount allowed by these rules to be possessed for private use; or

1.—"Rules... sale"—(Continued).

(*c*) in the case of any person who holds a license under these rules to possess an explosive, and who, duly observing the regulations prescribed in cl. (1) of Rule 30 in connection with his magazine or licensed premises, fills with the said explosive, for sale or otherwise, cartridges for small arms; or

(*d*) in the case of any person who holds a license under these rules to possess an explosive, and who, duly observing the regulations prescribed in cl. (2) of Rule 30 in connection with his magazine or licensed premises, by filling cartridges, making changes, or drying, sifting, fitting, or otherwise adapts, or prepares the said explosive for use exclusively in his mine or quarry or in some excavation or work carried on by him or under his control. F

(11) **License when required for possession.**

(1) An explosive shall not be possessed except under, and in accordance with the conditions of a license granted under these rules for such possession.

(2) Provides that cl. (1) of this rule shall not apply to the possession—

(*a*) of any explosive by a carrier or other person for the purpose of transport, when the same is being kept or transported in accordance with rules made under the Indian Explosives Act, 1884 (IV of 1884) and for the time being in force for regulating the transport of such explosive; or

(*b*) of any explosive on board any ship in pursuance of the Merchant Shipping Acts for the time being in force, or of any order or regulation for the time being in force thereunder, or

(*c*) by any person who is lawfully entitled under the Indian Arms Act, 1878 (XI of 1878), or the rules for the time being in force thereunder, to possess any explosive coming under the head of ammunition as defined in that Act, of such explosives in such quantities as may be prescribed by the said Act, or rules, or when no quantities are so prescribed in reasonable quantities for his own private use.

(*d*) by any person, of manufactured fireworks in any quantity not exceeding two hundred pounds when the same are obtained and intended for immediate use and not for sale, and are possessed by such person for a period not exceeding fourteen days, and

(i) not being in Burma, when they are kept in a substantial receptacle which is exclusively appropriated to the keeping of explosives, and is closed and secured so as to prevent unauthorised persons from having access to the explosives; and (if such fire-works be kept in a Municipality in any quantity exceeding fifty pounds) when they are covered by a permit issued by a Magistrate of the first class of a Police Officer not below the rank of Assistant District Superintendent of Police, and

(ii) being in Burma, when they are covered by a permit issued free of cost by a Magistrate of the first class or by a Police Officer not below the rank of a District Superintendent of Police requiring them to be kept in a separate closed receptacle in a building or excavation at a safe distance from any dwelling-house, shop or public way, and when they are kept in accordance with the terms of such permit.

1.—"Rules....sale"—(Continued).

(3) Provided also that cl. (1) of this rule shall not apply to the possession by any person, for his private use and not for sale of :—

(i) Gun-powder in any quantity not exceeding thirty pounds ; or

(ii) Safety cartridges made with gun-powder and containing in all not more than one hundred and fifty pounds of gun-powder ;

(iii) Cartridges (non-safety) for small arms, made with gun-powder and containing in all not more than five pounds of gun-powder ;

(iv) Cartridges for cannon, or blasting, made with gun-powder and not containing their own means of ignition, and containing in all not more than thirty pounds of gun-powder ; or

(v) Cartridges for small-arms, made with small-arms into compound and containing in all not more than ten pounds of small-arms, nitro-compound ;

(vi) Small-arms nitro-compound in any quantity not exceeding ten pounds; or

(vii) Percussion-caps or safety fuzes for blasting ; or

(viii) Railway fog-signals, when kept by a Railway Company for use on their railway ; or

(ix) Any other explosives in any quantity not exceeding ten pounds (whether or not contained in cartridges), or, in the case of detonators, in any quantity not exceeding one hundred in number : Provided that the possession of the explosives is covered by a permit issued by a Magistrate of the first class, or a Police Officer not below the rank of Assistant District Superintendent of Police.

(4) The quantity of any kind of explosive kept by any person for his private use under cl. 3 without license shall be in substitution for the like quantity of any other kind of explosive (whether gun-powder or not) which might otherwise be kept by him ; and the quantity of such other kind of explosive shall be reduced accordingly. Provided that, if the explosive so kept is in any other form than that of cartridges for small-arms, the explosive of which the quantity is reduced shall be some explosive other than safety cartridges made with gun-powder.

(5) Notwithstanding anything contained in cl. (3) or cl. (4) of this rule, cl. (*b*) shall apply to the possession for private use of explosives of the 5th (fulminate) case in any quantity. G

(12) **Saving of notification under S. 6 of the Explosives Act, 1884.**

Nothing in these rules shall be deemed to authorise the manufacture or possession of any explosive in contravention of any prohibition under S. 6 of Indian Explosives Act 1884 (IV of 1884) and for the time being in force. H

(13) **License when required for sale.**

(1) An explosive shall not be sold except under, and in accordance with the conditions of, a license granted under these rules for such sale.

(2) Provided that cl. (1) of this rule shall not apply to the sale by any person of an explosive, which he is lawfully entitled to possess for his own private use, to any person who is lawfully entitled to possess the same. I

1.—"Rules....sale"—(Continued).

GRANTS OF LICENSES.

(14) **Grants of licenses for manufacture, possession and sale in certain cases.**

(1) Licenses to manufacture, possess and sell or to possess and sell or to possess or to sell from stock kept in a magazine in respect of which a license has been granted under Rule 17—

(*a*) an explosive of the 1st (gun-powder) class, or

(*b*) small-arm nitro-compound belonging to the third class, or

(*c*) an explosive of the 1st division of the 6th (ammunition) class, or

(*d*) an explosive of the 7th (fire-work) class, may be granted in a Presidency-town or its suburbs, or in Rangoon by the Commissioner of Police, and elsewhere by the District Magistrate.

(2) A license granted under this rule shall not entitle the licensee to possess at the same time more than—

(i) two hundred pounds of gun-powder or small-arm nitro-compound, together with any quantity of explosives contained in ammunition of 1st division of the 6th (ammunition) class, or

(ii) two hundred pounds of manufactured fire-works, or

(iii) sixty pounds of explosives (including gun-powder, small-arm nitro-compound and manufactured fire-works) together with any quantity of explosives contained in an ammunition of the 1st division of the 6th (ammunition) class, or

(iv) any such less quantity of any of the said explosives as the licensing officer may think fit to specify in the license.

Provided that a licensee in the Presidency of Madras may, if he obtains a permit to this effect from a Magistrate of the first class or a Police Officer not below the rank of Assistant District Superintendent of Police, possess, subject to the conditions of his license, for a period of two days at the time of the Deepawali festival, any quantity of manufactured fire works not exceeding 1,000 lbs.

(3) Every such license shall specify the place in which alone the explosives referred to in it may be kept; and such place shall (except in the case of a license to sell from stock kept in a magazine in respect of which a license has been issued under Rule 17) be approved by the licensing authority.

(4) Notwithstanding anything contained in the foregoing clauses of this rule, any Mamlatdar or Mahalkari, in the Presidency of Bombay who is specially authorised by the District Magistrate in this behalf may grant licenses entitling *bona fide* agriculturists residing within the limits of the taluka under the charge of such Mamlatdar or Mahalkari to possess at the same time not more than one hundred pounds of gun-powder and more than ten safety fuzes for use with the same.

(5) Every license granted under this rule shall be in form A, Form B, Form C, Form D, or Form E in the schedule thereto annexed, as the case may be, and the said license shall contain the conditions prescribed therein.

(6) The expression "small-arm nitro-compound" as used in this rule, means a nitro-compound adapted and intended exclusively for use in cartridges for small arms.

1.—"Rules....sale"—(Continued).

(15) **Grant of licenses for manufacture in cases not provided for by Rule 14.**

(1) Licenses to manufacture explosives in cases not provided for by Rule 14 may be granted by the Governor-General-in-Council ;

(2) Every such license shall be in such form and shall contain such conditions as may be prescribed by the Governor-General-in-Council :

Provided that the conditions so prescribed in the case of the manufacture of any explosive in any quantity shall comprise all the conditions prescribed in these rules and the forms hereto annexed in the case of the possession of such explosive in such quantity. **J-1**

(16) **Grant of licenses for possession in certain cases not provided for by Rule 14.**

(1) Licenses for the possession, at such places as may be approved by the licensing officer, of explosives other than those specified in Rule 14 (fulminate) class, and if the quantity to be possessed at the same time does not exceed sixty pounds, be granted in a Presidency town or its suburbs or in Rangoon by the Commissioner of Police, and elsewhere by the District Magistrate.

(2) Every such license shall be in Form F in the Schedule hereto annexed, and shall contain the conditions prescribed therein. **J-2**

(17) **Grant of licenses for possession, and sale from a magazine in certain other cases.**

(1) Licenses for the possession of explosives in, and the sale of explosives from, a magazine in cases not provided for by rules 14 and 16, may, if the explosive is not one of the 5th (fulminate) class, be granted by the Local Government or by any officer authorized by the Local Government is this behalf.

(2 & 3) An applicant for such a license must submit on application to the District Magistrate or Commissioner of Police, as the case may be, who shall forthwith cause notice to be published of the application, and fix a day on which will be heard any persons who object to the establishment of a magazine on the proposed site and who have, not less than seven clear days before the day of hearing, sent to the said District Magistrate or Commissioner of Police, and to the applicant, notice of their intention to appear and object with their name, address and calling, and a short statement of the grounds of their objection.

(4) The day of hearing to be fixed under cl. (3) shall be a day following soon after the expiration of a period of one month from the publication and service of the notices prescribed by this rule.

(5) Where the site of the proposed magazine lies within, or within one mile of the limits of, the jurisdiction of any municipal authority or port authority the applicant shall prepare, for service on such authority, a notice of the application and of the said day of hearing.

(6) The notice by the District Magistrate or Commissioner of Police under cl. (3) shall be published, and the notice under cl. (5) shall be served, at the cost of the applicant, by the District Magistrate or Commissioner of Police, not less than one month before the said day of hearing.

(7) On consideration of the application, and on making such inquiry as he may deem necessary, the District Magistrate or Commissioner of Police may dissent altogether from the establishment of the magazine on the proposed site, or may assent thereto, either absolutely, or on any conditions requiring additional restrictions or precautions.

I.—"Rules....sale"—(Continued).

(8) On the completion of the inquiry, the District Magistrate or Commissioner of Police shall forward the application and draft license with his recommendation to the Chief Inspector of Explosives, who shall forward to the applicant a statement in Form H in the schedule hereto annexed, showing the distances which should, in his opinion, be kept clear round the magazine. The table of distances which will ordinarily be followed is that annexed to these rules.

(9) The said Form H shall be returned, with the third column duly filled in, by the applicant to the Chief Inspector of Explosives, who shall submit it to the licensing authority constituted by cl. (1) of his rule, with his recommendations, and with the draft license and a statement in Form I showing the distances which after considering any representation made by the applicant when returning Form H to him, he considers should be kept clear round the magazine.

(10) The licensing authority may thereupon grant the license as applied for or with such modifications or restrictions as may be deemed proper, or may reject the application.

(11) A copy of each license granted shall be forwarded to the Chief Inspector of Explosives, and the original license shall be forwarded to the District Magistrate or to the Commissioner of Police, as the case may be, if the license has not been granted by him.

(12) The District Magistrate or Commissioner of Police, when satisfied that the magazine is sufficiently completed according to the license to justify the use thereof, shall confirm the license; and unless and until so confirmed the license shall not come into force.

(13) If the District Magistrate or Commissioner of Police decides not to confirm any license, he shall forthwith inform the Chief Inspector of Explosives.

(14) Every license granted under this rule shall be in Form J in the schedule hereto annexed, and shall contain the conditions prescribed therein. **K**

(18) **Grant of license for possession in a floating magazine.**

(1) With the previous sanction of the Governor-General-in-Council, the local Government may, in cases of urgency and for any period not exceeding six months, grant a license for the possession of explosives under Rule 17 in a floating magazine.

(2) Notwithstanding anything contained in cl. (14) of Rule 17, such licenses shall be in Form K in the schedule hereto annexed, and shall contain the conditions and restrictions prescribed therein and such further conditions and restrictions (if any) as the Local Government may in any case direct. **L**

(19) **Grant of licenses for possession of fulminates.**

Licenses for the possession of explosives of the 5th (fulminate) class may be granted by the Governor-General-in-Council in such form, and subject to such conditions, as he may in each case prescribe. **M**

(20) **Grant of licenses for sale in cases not provided for by Rules 14 and 17.**

(1) Licenses for the sale of explosives in cases not provided for by Rules 14 and 17 may be granted, in a Presidency town or its suburbs or in Rangoon, by the Commissioner of Police, and elsewhere by the District Magistrate, to any person licensed to possess the same.

I.—"Rules....sale"—(Continued).

(2) Every such license shall be in Form L in the schedule hereto annexed, and shall contain the conditions prescribed therein. N

(21) **Duration of licenses.**

All licenses granted under any of these rules except Rule 18 shall expire on the 31st day of December of the year for which they are granted. O

RENEWAL OF LICENSES.

(22) **Renewal of licenses granted under Rule 15.**

The Local Government may, from time to time, renew, on the same or on altered conditions, any license granted by the Governor-General-in-Council under Rule 15 for the manufacture of explosives,—

Provided as follows :—

(1) no such renewal shall admit of the manufacture of any explosive other than that specified in the original license ;

(2) every such renewal shall first be approved by an Inspecter of Explosives ; and

(3) every such renewal shall be for a period not exceeding one year. P

(23) **Renewal of licenses granted under Rule 17.**

(1) Any licensee who desires the renewal of a license granted under Rule 17 must, before the expiration of the license, submit the license, to the Chief Inspector of Explosives with a written application stating the quantity and description of explosives for the storage of which he desires the license to be renewed.

(2) On receipt of such application, the Chief Inspector of Explosives shall, if there is any variation in the particulars of the license, send to the applicant a statement in Form H in the schedule hereto annexed, showing the distances which should, in his opinion, be kept clear round the magazine.

(3) The procedure prescribed in cls. (9) to (13) of Rule 17 shall then be followed, so far as it is applicable. Q

(24) **Renewal of other licenses.**

Any license granted under any of these rules other than Rule 15 or Rule 17 may, unless the circumstances have so changed that the grant of a new license either would not be authorized under the Indian Explosives Act, 1884 (IV of 1884), and these rules. or is deemed objectionable by the licensing authority, be renewed on application made previous to its expiration. R

DUPLICATE LICENSES.

(25) **Grant of duplicate licenses.**

When license granted under these rules be lost or accidentally destroyed, a duplicate may be granted to the licensee. S

TEMPORARY LICENSES.

(26) **Disposal of stock and grant of temporary license on expiration or forfeiture of license.**

(1) A person licensed to manufacture, possess or sell any explosive shall, on the expiration or forfeiture of his license, forthwith give notice to the District Magistrate or the Commissioner of Police, as the case may be,

I.—"Rules....sale"—(Continued).

of the quantity of such explosives then in his possession, and shall comply with any directions which the said Magistrate or Commissioner may think fit to give in regard to the possession or transport of the same.

(2) On receiving a notice under cl. (1) of this rule, the said Magistrate or Commissioner may grant, for a term not exceeding three months, a temporary license for the possession or sale of the actual stock of explosives which is held at the time of the issue of such license. T

FEES FOR LICENSES.

(27) **Amount of fees.**

The following fees shall be charged for license s granted under these rules, namely :—

A.—Each license granted under Rule 14—

(1) to manufacture, possess and sell the maximum quantity of explosives mentioned in the said rule, or any less quantity exceeding one-half ... Twenty Rupees ;

(2) to manufacture, possess and sell half the quantity of explosives mentioned in the said rule, or any less quantity exceeding one-fourth ... ... Ten Rupees ;

(3) to manufacture, possess and sell a fourth of the quantity of explosives mentioned in the said rule, or any less quantity ... ... Five Rupees ;

(4) to possess and sell the maximum quantity of explosives mentioned in the said rule, or any less quantity exceeding one-half... ... ... Ten Rupees ;

(5) to possess and sell half the quantity of explosives mentioned in the said rule, or any less quantity exceeding one-fourth ... ... Five Rupees ;

(6) to possess and sell a fourth of the quantity of explosives mentioned in the said rule, or any less quantity. ... ... Two rupees and eight annas ;

(7) to possess explosives ... ... Eight annas ;

Provided that only only one-half of the fees prescribed above shall be charged in the case of licenses, in Form D, to manufacture, possess and sell or to possess and sell fire-works in villages or another rural areas.

B.—Each license granted under—

Rule 15 or Rule 19	...	Such fee as the Governor-General in Council may in each case prescribe.
Rule 16 or Rule 20	...	Five rupees.
Rule 17 or Rule 18	...	Twenty Rupees.
C.—Each license on renewal	...	The same fee as that charged for the origiual license.
D.—Each duplicate license granted under Rule 25.	...	Eight annas.

I.—"Rules.... sale"—(Continued).

E.—Each temporary license granted under Rule 26.	...	A fee bearing the same proportion to the fee charged for the annual license as the period covered by the temporary license bears to a full year.
F.—Each new license granted under Rule 37.	...	One rupee. T-1

(28) **Exemption from payment of fees.**

Notwithstanding anything contained in Rule 27.

(1) the holder of a license duly granted in Form VI-B, or in Form VII-A, under Rule 11 of the Rules made under the Indian Arms Act, 1878 (XI of 1878), may, on production of such license before the District Magistrate, or, in a Presidency town or its suburbs in Rangoon, before the Commissioner of Police, be granted a license under Rule 14 of these rules without payment of any fee, and

(2) no fee shall be charged for licenses granted to contractors, cultivators or other persons to possess gun-powder, fuzes or other explosives in reasonable quantities when the same are proved to the satisfaction of the officer granting the license to be required *bona fide* for blasting purposes. U

29. **Stamps for payment of fees.**

(1) The fees chargeable under these rules shall ordinarily be levied by means of impressed stamps. An application for the grant or the renewal of a license shall bear the proper stamp; Provided that if the application is refused, the value of the saparate stamp (if any) which may have been already provided by the applicant for the desired license or renewed license, *minus* the deductions prescribed by section 54 of the Indian Stamp Act, 1899 (II of 1899), may be refunded to the applicant. An application should not be made on the stamped paper intended for the license or renewed license; but where this has been wrongly done, the value of the stamp may be refunded *minus*—

(i) the value of the stamp which should have been affixed to the application, and

(ii) the deductions prescribed as aforesaid.

(2) Where the fees leviable under these rules have been made over to any local body, the fees shall be paid in such manner as that local authority may from time to time direct. V

SUPPLEMENTAL PROVISIONS.

(30) **Regulations to be observed by certain persons who are exempted from taking out a license for manufacture.**

(1) When any person referred to in sub-clause (*c*) of cl. (2) of Rule 10 fills cartridges as indicated in that sub-clause, he shall see to the observance of the following regulations, namely;—

(*a*) there shall not be in the room in which such filling is being carried on more than five pounds of gun-powder or small-arm nitro-compound or such quantity of any other explosive as is prescribed by the Local Government in this behalf, unless it is made up into safety cartridges;

1.—"Rules....sale"—(Continued).

(*b*) no work unconnected with the making of the cartridges shall be carried on in the said room while such filling is being carried on;

(*c*) there shall not be in the said room, while such filling is being carried on, any fire or any artificial light except a light of such construction, position and character as not to cause any danger of fire or explosion;

(*d*) if filling is done on magazine premises, the said room shall be detached from the magazine, but shall be situated in the immediate neighbourhood thereof, and shall be situated at such distance therefrom as may be specified on the license by the authority granting the same; and

(*e*) the licensee shall give notice to the authority which granted his license that he intends to carry on such filling of cartridges as is allowed by this rule.

(2) When any person referred to in sub-cl. (*d*), of cl. (2) of Rule 10 adapts or prepares explosives as indicated in that clause, he shall see to the observance of the following regulations, namely:—

(i) there shall not be in the workshop in which such adaptation or preparation is carried on more than one hundred pounds of gunpowder, or such quantity of any other explosive as is prescribed by the Local Government in this behalf;

(ii) no work unconnected with such adaptation or preparation shall be carried on in the said workshop while such adaptation or preparation is being carried on;

(iii) the said workshop shall be detached from the magazine or licensed premises, but shall be situated in the immediate neighbourhood thereof, and shall be situated at such distance therefrom as may be specified on the license by the authority granting the same;

(iv) an explosive of one description shall not be converted into an explosive of another description, and an explosive shall not be unmade or resolved into its ingredients; and

(v) the licensee shall give notice to the authority which granted his license that he intends to carry on such application or preparation as is allowed by this rule. **W**

31. **Power to extend effect of license.**

Any authority granting a license under these rules may, if such authority thinks fit, direct, by an order written on the license that it shall have the effect of a like license granted by the like authority under the Indian Arms Act, 1878 (XI of 1878). **X**

32. **Powers of inspections, search, seizure, etc.**

(1) Any of the officers mentioned in cl. (2) of this rule may, within the areas respectively specified in that clause, but subject to the provisions of the Indian Arms Act, 1878 (XI of 1878), and of any rules for the time being in force thereunder, in cases to which that Act applies.—

(*a*) enter, inspect, and examine any place, carriage or vessel in which an explosive is being manufactured, possessed or sold under a license granted under these rules or any prior rules made under the Indian Explosives

1.—"Rules.... sale"—(Continued).

Act, 1884 (IV of 1884), or in which he has reason to believe that an explosive has been or is being manufactured, possessed or sold in contravention of the said rules or Act ;

(*b*) search for explosives therein ;

(*c*) take samples of any explosives found therein, on payment of the value thereof ; and

(*d*) seize, detain, remove and, if necessary, destroy or otherwise render harmless any explosive found therein in respect of which he has reason to believe that any of the provisions of the said rules or Act have been contravened.

(2) The officers and areas referred in cl. (1) of this rule are :—

OFFICERS.	AREAS.
The Chief Inspector of Explosives.	In all parts of British India.
All District Magistrates.	Within their respective districts.
All Magistrates subordinate to the District Magistrate.	Within the areas respectively subject to their jurisdiction.
The Commissioner of Police, and all Police-officers of rank not below that of Inspector, if specially deputed in this behalf by the Commissioner of Police.	
All Police-officers of rank not below that of Inspector.	Within the respective areas over which their authority extends.

(3) Whenever the Chief Inspector or an Inspector of Explosives, or any Magistrate subordinate to the District Magistrate, or any Police Officer seizes, detains or removes an explosive under the rule, he shall report the fact to the District Magistrate or (in a Presidency town or its suburbs or in Rangoon) the Commissioner of Police.

(4) Neither the Chief Inspector nor an Inspector of Explosives, nor any Magistrate subordinate to the District Magistrate, nor any Police Officer shall under these rules destroy or otherwise render harmless any explosive without the previous sanction of the District Magistrate or (in a Presidency town or its suburbs or in Rangoon) the Commissioner of Police, unless the matter appears urgent and fraught with serious public danger.

(5) Whenever any officer destroys any explosive or otherwise renders it harmless, he shall take and keep a sample thereof, and shall, if required, give a portion of the sample to the person owning the explosive or having the same under his control at the time of seizure ; and whenever any officer other than the District Magistrate or Commissioner of Police so deals with any explosive, he shall report the circumstances to the District Magistrate or (in a Presidency town or its suburbs or in Rangoon) the Commissioner of Police. Y

1.—"Rules....sale"—(Continued).

(33) **Production of license or authenticated copy thereof.**

(1) Every person holding a license, or acting under a license, granted under these rules shall be bound to produce the same, or an authenticated copy kept at the magazine or place to which the license applies, when called upon to do so by any Inspector of Explosives, any Magistrate, any Police Officer in charge of a police station or any Public Officer of higher rank.

(2) Copies of any such license may, for the purposes of this rule, be authenticated free of charge by any of the officers or by the authority which granted the license. **Y-1**

(34) **Control over officers.**

All Magistrates and other authorities shall, in the exercise of their functions under these rules, be subject to control of their immediate executive superiors and of the Local Government. **Z**

Penalties.

(35) **Fines.**

Whoever commits any offence mentioned in column 1 of the following table shall be punishable with fine which may extend to the amount mentioned in that behalf in column 2 of that table :—

1	2
Offences.	Fine which may be imposed.
Manufacturing an explosive in contravention of Rule 10. ...	Three thousand rupees.
Possessing an explosive in contravention of Rule 11...	One thousand rupees.
Selling an explosive in contravention of Rule 13	Five hundred rupees.
Committing a breach of any condition in a license granted under—	
Rule 14 or Rule 20 ...	Five hundred rupees.
Rules 16, Rule 17, Rule 18 or Rule 19 ...	One thousand rupees.
Rule 15 ...	Three hundred rupees.
Possessing or transporting an explosive in contravention of any direction given under Rule 26, cl. (1) ...	One thousand rupees.
Failing to produce a license or an unauthenticated copy thereof, when called upon to do so under Rule 33, cl. (1). ...	Two hundred rupees. **A**

(36) **Forfeiture of licenses.**

Every license granted under these rules shall be liable to be forfeited on breach of any of the conditions contained therein. **B & C**

(37) **Exemption from penalties of persons carrying on business of deceased or disabled licensee.**

If any person licensed to manufacture, possess or sell an explosive dies or becomes bankrupt, or becomes mentally incapable or otherwise disabled, the person carrying on the business of such licensee shall be liable to any penalty under these rules for carrying on the business or acting under the license during such reasonable time as may be necessary to admit of his making an application to the authority which grant the license for a new license in his own name during the currency of the unexpired portion of the original license. **D**

SCHEDULE.

See Appendix I.

[Government of India Notn. No. 9045—8, dated 29th Nov. 1906.]

1.—"Rules....sale"—(Continued).

B.—RULES TO REGULATE MANUFACTURE, POSSESSION AND SALE OF EXPLOSIVES MADE UNDER THIS SECTION BY LOCAL GOVERNMENTS, ETC.

For————for,

(*a*) Assam——see Assam Rules Manual.

(*b*) Bengal——see Cal. Gaz. 1897. Pt. I, p. 1322.
——— 1898 ——— 1080.
——— 1899 ——— 1082.
——— 1900 ——— 691.
——— 1901 —— pp. 375, 482, 1006.
——— 1902 ——— 360.
——— 1903 ——— 651.

(*c*) Bombay see Bom. Govt. Gaz. 1897—Pt. I—p. 1365.
———1898——— 1080.
———1899——— 1082.
———1900——— 691.
———1901———pp. 375, 482, 1006.
———1902——— 360.
———1903——— 651.

(*d*) Burma, see Bur. Gaz. 1902—Pt. I—p. 798.
——— 1903——— 468.
——— 1906——— 469, 709.

(*e*) Central Provinces, see Cen. Pro. Gaz. 1902, Pt. III, p. 253, 377.
See also Cen. Pro. Gaz. Sep. 19, 1908, Pt. I, p. 673.

(*f*) Coorg—See Coorg Dt. Gaz. 1898—Pt. I—p. 84.
———1899——— 64, 108, 109.
———1901——— 74, 169.
———1902——— 75.

(*g*) Madras—See Mad. Rules and Orders.

(*h*) United Provinces—See U.P. Rules and Orders.

(*i*) Punjab——Pun. Gaz. 1897—Pt. I—p. 303.
———1899——— 513.
———1900——— 369, 520.
———1901——— 293, 570, 674, 1018.
———1902——— 66, 422.
———1903——— 856.

As to how far these local rules are still in force, *see* Gazette of India, 1906, Pt. I, p. 827. E

C.—CASES.

(1) **"Patakhs" or crackers, whether "fire-works"—License whether necessary for sale.**

Patakhs, which are small packets, wrapped in a paper, of coloured potash mixed with small pieces of *kankar*, and which explode with a slight report when thrown with force against a wall or *other* hard surface, are not *fire-works* within the meaning of the Explosives Act, and so no license is necessary for the manufacture or sale of "*Patakhs*." 8 P.R. 1910 Cr. F

1.—"Rules....sale"—(Concluded).

(2) License for manufacture of explosives.

A licensee for the manufacture of explosives is not at liberty to associate other persons with himself in the manufacture and sale of explosives without such other persons being approved of by the authorities and being provided with licenses. 1 Weir 756. **F1**

(3) Rules framed under Ss. 5 and 7—Possession of explosives.

Accused's house was searched for opium and in it were found three cartridges of blasting powder and three detonators. He was convicted under Rule 5 of the rules for the manufacture, possession and sale of explosives in Burma, for possessing an explosive without a license. *Held* that licenses under these rules are not required for the possession of explosives of this nature in moderate quantities. The rules are not applicable to the case. But cartridges and detonators are "ammunition" as defined in S. 4, Indian Arms Act and the accused might properly have been convicted under S. 19 (*f*) of that Act. U.B.R. (1897—1901), Vol. I, 193. **F2**

2.—"Transport and importation of explosives."

A.—RULES TO REGULATE THE TRANSPORT AND IMPORTATION OF EXPLOSIVES.

Preamble.

No. 4555—4, dated the 31st May, 1907.—In supersession of the Notification of the Government of India in the Home Department, No. 5528 (Public), dated the 11th October, 1901, and of all amending notifications, and in exercise of the powers conferred by sections 5 and 7 of the Indian Explosives Act, 1884 (IV of 1884), the Governor General in Council is pleased to make the following rules to regulate the transport and importation of explosives.

Extent of application.

These rules extend to the whole of British India, but the rules relating to the transport of explosives shall cease to apply to any port as defined in the Indian Ports Act, 1889 (X of 1889), for which special rules made by the Local Government are for the time being in force, in so far as they are expressly superseded by, or are inconsistent with such special rules.

(Note).

Indian Ports Act 1889.

See now, Indian Ports Act, 1908.

General exemptions.

Nothing in these rules shall apply to the packing, transport or importation of capped safety cartridge cases, if otherwise empty, when packed, transported or imported in the same consignment with arms covered by a license granted under the Indian Arms Act, 1878 (XI of 1878).

PRELIMINARY.

1. (1) For the purposes of these rules, explosives shall be classified as follows, namely :—

Classification of explosives.

Class 1	...	Gunpowder.
Class 2	...	Nitrate-mixture.
Class 3	...	Nitro-compound.

Class 4	...	Chlorate-mixture.
Class 5	...	Fulminate.
Class 6	...	Ammunition.
Class 7	...	Fireworks.

(2) When any explosive falls within more than one of the said classes, it shall be deemed to belong exclusively to the latest of such classes.

Definition of "gunpowder" (class 1).

2. The expression "gunpowder", as used in these rules, means exclusively gunpowder ordinarily so called.

Definition of "nitrate-mixture" (class 2.)

3. The expression "nitrate-mixture," as used in these rules, means any preparation, other than gunpowder, which is formed by the mechanical mixture of nitrate with any form of carbon or with any carbonaceous substance not possessed of explosive properties, whether sulphur be or be not added to such preparation, and whether such preparation be, or be not mechanically mixed with any other non-explosive substance.

Nitrate-mixture includes, among other explosives.—

Chilworth special powder,	...	Ripp-Lene,
Fortis explosive,	...	Safety blasting powder, and Westfallite.

Definition and sub-division of "nitro-compound" (class 3).

4. (1) The expression "nitro-compound" as used in these rules means any chemical compound which is possessed of explosive properties, or is capable of combining with metals to form an explosive compound, and is produced by the chemical action of nitric acid (whether mixed or not with sulphuric acid) or of a nitrate mixed with sulphuric acid upon any carbonaceous substance, whether such compound is mechanically mixed with other substances or not.

(2) Nitro-compound shall, for the purposes of these rules, be subdivided as follows, namely :—

(*a*) Division 1, comprising—

(i) such explosives as—

Amberite No. 1,	Dynamite,
Ballistite,	Gelatine Dynamite,
Blasting Gelatine,	Gelignite,
Carbonite,	Lithofracteur,
Cordite,	Nitro-glycerine, and Stonite, and

(ii) any chemical compound or mechanically mixed preparation which consists, either wholly or partly, or nitroglycerine or some other liquid nitro-compound ; and

(*b*) Division 2, comprising—

(i) Such explosives as—

Amberite No. 2,	Nitrated gun-cotton,
Ammonite.	Picrates,
Bellite,	Picric powder,
Coopal's powder,	Roburite,
Cotton gunpowder,	Sawdust and gun-cotton powder,
E.C. powder,	Schultz's powder, and
Gun-cotton ordinarily so called,	Tonite (or cotton powder), and

(ii) any nitro-compound, as hereinbefore defined, which is not comprised in Division 1.

Definition and sub-division of "chlorate-mixture" (class 4),

5. (1) The expression "chlorate-mixture" as used in these rules, means any explosive containing a chlorate,

(2) Chlorate-mixture shall, for the purposes of these rules, be sub-divided as follows, namely:

(*a*) Division 1, comprising—

(i) such explosives as—

Horsely's blasting powder, and

Brain's blasting powder, and

(ii) any chlorate preparation which consists partly of nitro-glycerine or of some other liquid nitro compound, and

(*b*) Division 2, comprising—

(i) such explosives as—

Horsley's original blasting powder.

Erhardt's powder,

Reveley's powder,

Hochstadter's blasting charges,

Reichen's blasting charges,

Teutonite, and Chlorated gun-cotton, and

(ii) any chlorate mixture as hereinbefore defined which is not comprised in Division 1.

Definition and sub-division of "fulminate" (class 5).

6. (1) The expression "fulminate" as used in these rules, means any chemical compound or mechanical mixture whether included in any of the foregoing definitions or not, which, from its great susceptibility to detonation, is suitable for employment in percussion-caps or any other appliances for developing detonation, or which from its extreme sensibility to explosion and from its great instability (that is to say, readiness to undergo decomposition from very slight exciting causes), is especially dangerous.

(2) Fulminate shall, for the purposes of these rules, be sub divided as follows, namely:—

(*a*) Division 1, comprising such compounds as the fulminates of silver and of mercury and preparations of those substances, such as are used in percussion-caps, and any preparation consisting of a mixture of a chlorate with phosphorous, or certain descriptions of compounds of phosphorous, with or without the addition of carbonaceous matter, and any preparation consisting of a mixture of a chlorate with sulphur, or with sulphuret, with or without carbonaceous matter; and

(*b*) Division 2, comprising such substances as the chloride and the iodide of nitrogen, fulminating gold and silver, diazobenzol, and the nitrate of diazobenzol.

Definition of "ammunition", "percussion-cap", "detonator," "safety fuze" and "safety cartridge," and sub-division of "ammunition" (class 6).

7. (1) The expression "ammunition", as used in these rules, means any explosive included in any of the foregoing definitions, when the same is enclosed in any case or contrivance, or is otherwise adapted or prepared so as to form—

(*a*) a cartridge or charge for small-arms, cannon, or any other weapon, or for blasting, or

(*b*) a safety or other fuze for blasting or for shells or

(*c*) a tube for firing explosives, or

(*d*) a percussion-cap, a detonator, a fog signal, a shell, a torpedo, a war-rocket, or any other contrivance other than a firework.

(2) The expression "percussion-cap" as used in these rules does not include a detonator.

(3) The expression "detonator," as used in these rules, means a capsule or case which is of such strength and construction, and contains fulminate in such quantity, that the explosion of one capsule or case would communicate the explosion to other, like capsules or cases.

(4) The expression "safety fuze," as used in these rules, means a fuze for blasting which burns and does not explode, and which does not contain its own means of ignition and which is of such strength and construction, and contains an explosive in such quantity, that the burning of such fuze would not communicate laterally with other like fuzes.

(5) The expression "safety cartridge" as used in these rules,—

(i) means a cartridge for small-arms, the case of which can be extracted from the small-arm after firing, and which is so closed as to prevent any explosion in one cartridge being communicated to other cartridges ; and

(ii) includes a rifle-calibre machine-gun cartridge, if it is as described in clause (i) whether it is for use with a machine-gun having chambers identical with those of rifles or with a machine-gun having special chambers.

Provided that the diameter of the cartridge in either case (i) or case (ii) does not exceed one inch.

(6) Ammunition shall, for the purposes of these rules, be sub-divided as follows, namely :—

(*a*) Division 1, comprising exclusively—

Safety cartridges,	Railway fogsignals, and
Safety fuzes for blasting,	Percussion-caps ; and

(*b*) Division 2, comprising any ammunition, as hereinbefore defined, which does not contain its own means of ignition and is not included in Division 1, such as—

Cartridges for small-arms, other than safety cartridges,

Cartridges and charges for cannon, shells, mines, blasting or other like purposes,

Shells and torpedoes containing any explosive,

Fuzes for blasting, other than safety fuzes,

Fuzes for shells,

Tubes for firing explosives, and

War-rockets,

which do not contain their own means of ignition ; and

(*c*) Division 3, comprising any ammunition as hereinbefore defined, which contains its own means of ignition and is not included in Division 1, such as—

Detonators,

Cartridges for small-arms, which are not safety cartridges,

Fuzes for blasting, which are not safety fuzes,

Fuzes for shells, and

Tubes for firing explosives,

containing their own means of ignition.

Explanation.—The expression "ammunition containing its own means of ignition" means ammunition having an arrangement, whether attached to or forming part of the ammunition, which is adapted to explode or fire the ammunition by friction or percussion.

Sub-division of "fire-work" (class 7).

8. Fireworks shall, for the purposes of these rules, be sub-divided as follows, namely:—

(1) Division 1, comprising firework compositions, that is to say,—

(*a*) any chemical compound or mechanically mixed preparation of an explosive or inflammable nature, which is used for the purpose of making manufactured fireworks, and is not included in any of the foregoing definitions,

(*b*) any star, and

(*c*) (except as declared in the proviso to this rule) any coloured fire composition; and

(2) Division 2, comprising manufactured fireworks, that is to say, any explosive of class 1,2,3,4,5 or 6 and any firework composition, when such explosive or composition is enclosed in any case or contrivance, or is otherwise manufactured so as to form a squib, cracker, toy cap or amorce, serpent, rocket (other than a war rocket), maroon, lance, wheel, Chinese fire, Roman candle, or other article specially adapted for the production of pyrotechnic effects or pyrotechnic signals or sound signals:

Provided that a substantially constructed and hermetically closed metal case containing not more than 1 lb. of coloured fire composition of such a nature as not to be liable to spontaneous ignition shall be deemed to be a "manufactured firework" and not a "firework composition."

TRANSPORT.

Packing of explosives for conveyance.

9. The following general rules shall be observed with respect to the packing of explosives for conveyance,—

(1) Unless the context otherwise requires,—

the expression "outer package" means a box, barrel, case or cylinder, of wood, metal or other solid material, of such strength, construction and character that it will not be broken or accidentally opened, nor become defective or insecure whilst being conveyed, and will not allow any explosive to escape;

the expression "inner package" means a substantial case, bag, cainster or other receptacle, made and closed so as to prevent any explosive from escaping;

the expression "authorized explosive" means exclusively an explosively included in a List of Authorized Explosives prepared by the Chief Inspector of Explosives with the Government of India, and published annually in the Gazette of India, and in force for the time being;

the expression "propellant" means an authorised explosive of class 3, adapted and intended exclusively for use as a propelling charge in cannon or small-arms; and

the expression "special authority" means a written authority granted by the Chief Inspector of Explosives, to which may be attached such conditions as may, in the opinion of the Chief Inspector of Explosives, be necessary to meet the special requirements of the case.

(2) The interior of every package shall be free from grit and otherwise clean.

(3) Save as hereinafter provided, there shall not be any iron or steel in the construction of any package unless the same is covered with suitable material so as effectually to prevent the exposure of such iron or steel.

(4) Every package when actually used for the packing of one explosive shall not be used for the packing of any other explosive or any other article or substance.

Provided that this rule shall not prevent the packing of inner packages containing a propellant in an outer package with inner packages containing gunpowder or another propellant;

Provided also that this rule shall not prevent the packing of any article which is not of an inflammable or explosive nature, or liable to cause fire or explosion, in the same package as an explosive of the 1st Division of the 6th (ammunition) class.

(5) Subject to the foregoing provisions, the following shall be the method of packing authorised explosives of various classes respectively, and the maximum amounts which may be, in any one package;—

Class.	Method in packing.	Amount in any one outer package.	Amount in any one inner package.
Class 1 ...	When the quantity in any one consignment does not exceed 5 lbs. in amount, a single outer package; otherwise.	100 lbs. Provided that where gunpowder and propellant are packed together the amount shall not exceed.	100 lbs.
	A double package, the inner and outer packages being as above defined.	50 lbs.	25 lbs.
Class 2 ...	As for Class 1	50 lbs.	50 lbs.
Class 3, Division 1, other than propellants.	As for Class 1, provided that either the outer or inner package shall be thoroughly waterproof, and both shall be without metal in the construction thereof.	50 lbs.	25 lbs.
Class 3, Division 1, propellants.	As for Class 1	50 lbs.	50 lbs.
Class 3, Division 2, other than Picric Acid and Wet Gun-cotton.	As for Class 1	50 lbs.	50 lbs.
Picric Acid ...	As for Class 1	Unlimited.	Unlimited.
Gun-cotton so wetted with water as to be absolutely uninflammable.	As for Class 1, provided that the inner or outer package, or both of them, shall be of such a nature, and so closed as to prevent any material loss of moisture during conveyance.	Unlimited.	Unlimited.
Class 4 ...	As for Class 1	50 lbs.	50 lbs.

Class.	Method of packing.	Amount in any one outer package.	Amount in any one inner package.
Class 5 ...	Packed in water. A treble package, the innermost package being a bag permeable to water, enclosed in a case containing sufficient water to ensure the explosive being kept constantly wet; and the outer package containing sufficient water constantly to surround the case. Both the case and the outer package shall be of such construction as will not allow water to escape. If the explosive is of such character that it cannot be packed in a thoroughly wet condition, it shall be packed in accordance with conditions set forth in a special authority.	200 lbs.	25 lbs.
Class 6, Division 1, other than pinfire cartridges for pistols.	A single outer package.	Unlimited.	.....
	Provided that the above general rule (3) shall not apply to explosives of this Division. Provided also that bulleted cartridges of a calibre exceeding 0·5 inch and belonging to this Division, shall be packed in such a manner that the point of any bullet cannot come in contact with the cap of another cartridge.		
Pin-fire cartridges for pistols.	(*a*) Not exceeding 50 in number in any one consignment:—So packed in a single package that the bases lie alternately in opposite directions. The bases and pins shall be so fitted into perforations in millboard or other suitable material as to prevent the firing of any one of the said cartridges, by an explosion in any other of the said cartridges.	50 in number.	.....
	(*b*) Exceeding 50 in number:—In an inner and outer package, the cartridges being packed in inner packages with millboard as above required.	2,500 in number.	50 in number.
Class 6, Division 2 ...	Explosives made into cartridges or charges, for cannon, shells, torpedoes, mines, blasting or other like purposes, shall be packed in such manner and in such quantity as is required for the same explosive when not so made up; provided that, where a double package is required, the enclosing case of such cartridges or charges may, if it satisfies the conditions, required for an inner package, be held to be such inner package.		
	Other ammunition of this Division:—A single outer packge.	100 lbs.	.....
Class 6, Division 3, other than Detonators and Electric Detonators.	As for Class 1	50 lbs.	2 lbs. or 10 in number, whichever be the greater.
	Provided that bulleted cartridges of a calibre exceeding 0·5 inch and belonging to this Division shall be packed in such a manner that the point of any bullet cannot come in contact with the cap of another cartridge.	1,000 in number.	1,00 in number.

Class.	Method of packing.	Amount in any one outer package.	Amount in any one inner package.
Detonators ...	(a) Not exceeding 1,000 in any one consignment :—As for Class 1, provided that the detonators and the spaces between the same and between the sides of the inner package and the said detonators shall all be filled, as far as practicable, with fine sawdust or other similar material ; a layer of felt or other soft yielding material shall be placed between both ends of all the detonators and the interior of the inner package in which the same are placed, in such manner, and so secured, that both ends of the detonators will rest upon the said-cotton wool or other material ; every inner package, if of metal, to be lined throughout with paper or other soft material ; and		
	(b) Exceeding 1,000 detonators :	10,000 in number.	100 in number.
	The detonators shall be packed in inner packages, with sawdust and cotton-wool as above described. Such inner packages shall be placed inside a substantial case of wood or metal, made and closed so as to prevent any of the inner packages escaping therefrom and such case shall be placed inside an outer package in such manner and so secured as to leave a clear space of not less than three inches, between the case and every part of the interior of the said outer package, notwithstanding that such clear space may, if preferred, be filled with sawdust, straw, or other similar material, or may contain a light framework or battens of wood to keep the case aforesaid in position in the outer package ; and		
	(c) Where the number of detonators exceeds 5,000 such outer package shall be provided with handles or other contrivance by means of which it can be safely and conveniently carried.		
Electric detonators ...	As for class 1, provided that where the number in any outer package exceeds 3,000 such outer package shall be provided with handles or other contrivance, by means of which it can be safely and conveniently carried.	5,000 in number.	100 in number.
Class 7, Division 1 ...	Double package, the inner package being hermetically closed, and contained in an outer package as above defined.	20 lbs.	1 lb.
Class 7, Division 2 ...	Single outer package, provided that the above general rule (3) shall not apply to explosives of this Division.	100 lbs.	.....

(6) Nothing in this rule shall be deemed to prohibit the use of an additional package, whether inner or outer, provided that such additional package shall not be of such character as shall have been prohibited in writing by the Chief Inspector of Explosives.

(7) An explosive which is not an authorised explosive shall be packed in such manner as may be directed by a special authority with reference to such explosive.

(8) On the outermost package there shall be affixed in conspicuous characters, by means of a brand or securely attached label or other mark, the word "Explosive," the name of the explosive, and number of the class and division to which it belongs, and the name of the manufacturer or sender.

In the case of explosives of classes 3 and 4, there shall be added the date of manufacture or issue from the factory, or such sign indicating such date as may be approved by the Chief Inspector of Explosive.

Provided first that in the case of cartridges or charges for cannon. shells, mines, blasting or other like purpose, which do not contain their own means of ignition, the marking shall be as for the explosive when not so made up.

Provided secondly, that in the case of explosives of class 6, Division 1 (Safety Fuzes excepted), there shall be added the words "Not liable to explode in bulk."

Provided thirdly, that in the case of Pin-fire cartridges for pistols there shall be added the word " Pin-fire cartridges."

Provided fourthly, that in the case of Safety Fuzes or Gunpowder the word "Expolsive" and the number of the class and division may be omitted ; and

Provided fifthly, that where an outer package contains more than one explosive, the marking above required shall be affixed separately in respect of each explosive so contained.

(9) To meet special cases exemption may be granted by special authority from the observance of any one or more of the conditions imposed by this rule. J

(Notes).

1.—"Authorised explosive."

DEPARTMENT OF EXPLOSIVES.

NOTIFICATION.

Dated Calcutta, the 3rd March, 1910.

No. 385.—With reference to Notification No. 4555—4, dated the 31st May, 1907, of the Government of India, Department of Commerce and Industry, publishing rules to regulate the transport and importation of explosives, the following list of "authorized explosives" referred to in rule 9 (1) of the above rules is published for general information :—

LIST OF AUTHORISED EXPLOSIVES.

The following explosives are at present authorised for importation into British India, for General sale :—

CLASS 1.—GUNPOWDER.

Gunpowder.

CLASS 2.—NITRATE MIXTURE.

Ammonal.

Chilworth Special Powder.

CLASS 3.—NITRO-COMPOUND.

Every explosive in this class and every explosive ingredient thereof shall be so thoroughly purified and otherwise of such character as to satisfy a test known as the heat test, and specified in the rule for testing explosives, published with notification No. 4555-4, dated the 31st May, 1907, referred to above.

DIVISION 1.

Ballistite.
Blasting Gelatine.
Carbonite.
Celtite.
Cordite.
Cordite, M. D.
Dynamite.
Gelatine Dynamite, No. 1.
Gelatine Dynamite, No. 2, or Gelignite.
Monoble Powder.
Phoenix Powder.

Provided that every explosive in this division shall be of such character and consisting as not to be liable to liquefaction or exudation.

DIVISION 2.

Amberite, No. 2.
E. C. Sporting Powder.
Empire Powder.
Guncotton.
Imperial Schultze Gunpowder.
Negro Powder,
Picric Acid.
Picric Powder.
Roburite.
Smokeless Diamond.
Tonite or Cotton Powder.

CLASS 4.--CHLORATE MIXTURE.

Nil.

CLASS 5.—FULMINATE.

Nil.

CLASS 6.—AMMUNITION.

DIVISION 1.

Percussion Caps.
Railway Fog Signals.
Safety Cartridges.
Safety Fuzes for Blasting.
Safety Electric Fuzes.

DIVISION 2.

Cartridges for Cannon, Shells, Mines, Blasting or other like purposes.
Cartridges for Small Arms which are not Safety Cartridges.
Electric fuzes.
Fuzes For Shells.
Tubes for firing Explosives.
War Rockets.

DIVISION 3.

Cartridges for Small Arms which are not Safety Cartridges.
Detonators.
Electric Detonators.
Friction Tubes.
Fuzes for Shells.
Tubes for Firing Explosives.

CLASS 7.—FIREWORK.

DIVISION 1.

Nil.

DIVISION 2.—MANUFACTURED FIREWORKS.

Manufactured Fireworks,
Aluminium Torches.
Amorces.
Chinese Crackers.
Electric Sparklers.
Light Signals.
Magnesium Torches.
Pyrotechnic Matches.

Penalty.

10. Whoever commits a breach of any of the foregoing rules relating to the packing of explosive for conveyance shall be punishable with fine which may extend to Rs. 1,000.

Mode of conveyance.

11. The following general rules shall be observed with respect to the conveyance of explosives :—

I.—No explosive shall be conveyed from place to place unless packed in the manner provided for in the foregoing rules.

II.—There shall not be conveyed in any carriage or vessel which is being used for the conveyance of an explosive, any explosive of a different class and division, of whatsoever nature, which contains its own means of ignition, unless it is sufficiently separated therefrom to prevent any fire or explosion which may take place in one such explosive being communicated to another.

III.—Except in the case of small consignments carried by railway which may be unloaded at any time, explosives shall be loaded or unloaded only between sunrise and sunset. For the purpose of this rule no consignment of more than half a wagon-load booked to one station shall be deemed to be a small consignment.

IV.—Whilst the explosive is being loaded on or unloaded out of any carriage or vessel, no fire or artificial light, or any article which is liable to cause or communicate fire or explosion (such as charcoal, lucifer matches, articles for striking a light, petroleum to which the Indian Petroleum Act, 1899 (VIII of 1899), or any other Act for the time being in force regarding the importation, possession, and transport of petroleum, applies, or any spirit or oil or substance that gives forth an inflammable vapour at a temperature below 100° Fahrenheit) shall be, or shall be allowed to be, brought, had or used dangerously near to such carriage, ship or boat, and no smoking shall be allowed in, on, or dangerously near to, the same :

Provided that when the use of a light for the purpose of such loading or unloading is unavoidable, a lamp of such construction, position, or character as not to cause any danger from fire or explosion may be used ; and no person, while handling any explosive (except an explosive of Division 1, class 6, if packed in accordance with the packing rules,) shall wear boots or shoes with iron or steel nails, heels or tips.

V.—In the loading or unloading of any explosive, the casks and packages containing the same shall be passed from hand to hand and not rolled upon the ground ; they shall not be thrown or dropped down, but shall be carefully deposited and stowed.

VI.—The explosive shall not be conveyed except in the interior of a carriage so enclosed on all sides with wood or metal, or in the hold of a ship or boat having a close deck so closed, as effectually to protect the explosive against accident by fire from without. If the explosive cannot be so secured it shall be completely covered with painted cloth, tarpaulin, or other suitable material so as to effectually protect it against communication of fire.

VII.—There shall not be any iron or steel in the interior of the portion of the carriage or vessel with which the case containing the explosive is or may come in contact, unless the same is effectually covered with leather, wood, cloth, or other suitable material.

VIII.—In the stowing of the explosive, due precautions shall be taken by means of a partition or otherwise and by careful stowing to secure such explosive from being brought into contact with, or endangered by, any other article or substance conveyed in such carriage or vessel which is liable to cause fire or explosion ; and if the explosion is dangerously affected by water, due precautions shall be taken to exclude water from coming into contact with such explosive.

IX.—The amount of the explosives conveyed in any one carriage or vessel at any one time shall not exceed 2,000 lbs. unless the carriage be so enclosed on all sides with wood or metal ; or the vessel have a close deck so closed, as effectually to protect the explosive against accident by fire from without, in which case the amount of the explosive conveyed shall not exceed the following :

	Tons.
In any one carriage on a railway ...	10.
In any one other carriage. ...	2.
In any one vessel. ...	20.

NOTE.—This rule shall, in the case of dynamite conveyed by railway, be read subject to paragraph XII of Rule 13.

X.—Nothing in the foregoing rules (except Rule 1) shall apply to any explosive of the 1st Division of the 6th (ammunition) class :

Provided that all due precautions are taken for the prevention of accidents.

Conveyance otherwise than by railway.

12.—The following rules shall be observed with respect to the conveyance and of explosives otherwise than by railway :

I.—No explosive shall be conveyed in a carriage or boat whilst carrying or plying for public passengers, unless the quantity is less than 5 lbs. and notice has been given beforehand to the person in charge of such carriage or boat ; and all due precautions are taken for the prevention of accidents by fire or explosion.

Provided that there shall not be conveyed in any such carriage or boat any explosive of the 5th (fulminate) class or any explosive of the 3rd Division of the 6th (ammunition) class, or of the 1st Division of the 7th (firework) class, except detonators packed according to Rule 9 to the number of 200.

Provided that the amount of explosive of the fifth (fulminate) class in the detonators shall in no case exceed in the aggregate 3 oz. (a certificate to this effect being given by the agent of the company by whom the detonators are tendered for transport),

Provided also that no other explosive is carried in the same compartment.

II. With respect to the conveyance by carriage or vessel of explosives of the 5th (fulminate) class, or of the 3rd division of the 6th (ammunition) class, or of the 1st Division of the 7th (firework) class, or of larger quantities than 5 lbs. of any other explosive, the following regulations shall be observed :—

(1) The person in charge of the carriage or vessel shall not drive or conduct the same in a dangerous or reckless manner, and shall take all due precautions to avoid fire and explosion, and no person shall do any act or thing in relation to the explosive which tends to cause fire or explosion, and is not reasonably necessary for the conveyance of the explosive or for work immediately connected with such conveyance; and a person who is intoxicated shall not have charge of any carriage or vessel conveying explosive, and shall not be permitted to be in, or attending the same.

(2) A person shall not forward to any warehouseman or carrier a consignment of explosive, unless he has given notice to such warehouseman or carrier beforehand, stating the name and quantity of the explosive proposed to be conveyed, and the name and address of the proposed consignee, and has had an intimation that the warehouseman or carrier is prepared to receive the consignment, and a warehouseman or carrier shall not make such an intimation, nor receive such consignment, unless he is prepared to receive it, and forthwith to despatch the same, or to deposit it in a magazine or at a place at which a person is licensed to possess the same.

(3) The carriage or vessel conveying the explosive shall be in charge of, and constantly attended by, some competent person, or by a sufficient number of competent persons, and such persons shall not, if the amount of the explosive conveyed exceed 100 lbs., stop or delay for a longer time than may be reasonably necessary, or stop unnecessarily at any place where such stopping would be attended with special public danger.

III. No explosive belonging to class 1 (gunpowder class), class 2 (nitrate-mixture class), class 3 (nitro-compound class), class 4 (chlorate-mixture class) or class 5 (fulminate class), shall be carried otherwise than by rail, across any railway bridge over which reasonable facilities for the conveyance thereof by rail are afforded by the Railway Administration.

Provided that this prohibition shall not apply in respect of quantities of explosives of class 1 (gunpowder class) or class 3 (nitro-compound class) not exceeding 5 lbs. in weight.

Conveyance by public railways.

13. The following rules shall be observed with respect to the conveyance of explosives by public railways :

I.—No person shall send for carriage upon any railway any consignment of an explosive, unless he has given to the officer in charge of the Railway station previous notice in writing which, at the option of the Railway Administration, may extend to 48 hours, of his intention to send such consignment, and stating the true name, description, quantity, and mode of packing of the explosive proposed to be conveyed, and his own name and address, and also the name and address of the proposed consignee, and unless he has had an intimation in writing from an authorised officer of the railway that such consignment will be received.

II.—No explosive which a Railway Administration shall, by any notice or regulation for the time being in force, notify that they will not receive, shall be brought, sent or forwarded to or upon any railway of the said Railway Administration.

III.—Consignments of explosives shall be sent to the forwarding station and shall be received by the railway servants only at such times, between sunrise and sunset, as

the Railway Administration may appoint; and every package containing any explosive proposed to be conveyed on any railway shall immediately on arrival at the station be unloaded and placed in a safe place under the special direction of the officer in charge of the station.

All gunpowder under despatch or receipt by a Government arsenal, depôt or factory, shall be loaded or unloaded in the railway vans by Government servants employed in such arsenal, depot or factory. In each case when used by the Railway for the transport of gunpowder the packages of gunpowder shall be secured in such a way as to prevent concussion when the train is in motion.

IV.—An explosive shall be removed by the consignee from the receiving station during the twelve hours of daylight after arrival: If this condition is not strictly complied with, the Railway Administration may return the consignment to the consignor at his risk and expense. And such packages shall in the meanwhile be kept as far away from the station buildings as possible, in the wagon they were conveyed in, or, if unloaded, shall be compeletly covered with tarpaulins or other suitable material, and, if necessary, shall be protected by a police guard.

V.—The Railway Administration may refuse to receive any packages which they suspect to contain any explosive packed or sent in contravention of these regulations. And in case any package, which the Railway Administration suspect, shall be upon any railway, the Railway Administration may open, or require to be opened, such package, to ascertain the fact, at the risk and expense of the consignor, and may return the explosive contained in the package to the consignor, at his risk and expense, keeping the package, pending such return, in the manner prescribed in the preceding rule.

VI.—Subject to the exception provided for in clause (*e*), no explosive shall be conveyed by passenger train except of the kinds and in the manner hereinafter specified in this rule :—

(*a*) Safety-cartridges and percussion-caps and safety-fuzes (for blasting), also fog-signals for railway use which may be conveyed in ordinary wagons or carriages.

(*b*) Explosives of the 3rd (nitro-compound) class which may be carried in the form of cartridges up to the limit of 5 lbs.

Provided that no detonators are carried in the same compartment.

(*c*) Detonators packed according to Rule 9 may be carried to the number of 200.

Provided that in no case the amount of fulminate of mercury in the package or packages containing the detonators exceeds in the aggregate 3 oz. (a certificate to this effect being given by the company, firm, or person tendering the detonators for transport or by its or his agent) :

Provided also that no other explosive is carried in the same compartment.

(*d*) Sporting gunpowder or non-safety cartridges packed in double cases as before provided, so long as the gunpowder is contained in one-pound tin canisters packed in a stout wooden case with an outer covering of tin or zinc completely spark-proof, or in metal-lined cases of a pattern approved by the Railway Administration. But no outer case shall contain more than 25 lbs. of gunpowder, and the total consignment of gunpowder or non-safety cartridges by one train shall not exceed 80 lbs.

(*e*) Explosives may be carried by mixed trains on any line on which goods trains are not running, subject to the conditions that they are loaded in properly constructed powder vans ; that not more than one powder

van containing explosives is forwarded at any one time by a mixed train; that there are not less than three vehicles between the powder van and either the engine or the passenger coaches; that the powder van is close coupled to the adjoining vehicles; and that directly a powder van containing explosives arrives at a section on which goods trains are running, it is detached from the mixed train.

VII.—Not more than five carriages containing explosives shall be loaded or unloaded at any railway station or be conveyed by any one train at any one time; and the quantity of explosive to be contained in any one carriage shall not exceed two-thirds of the normal load, unless the carriages shall be especially built and approved by the Railway Board for the conveyance of explosives. But nothing in this clause shall be held to apply to separate consignments of safety carriages for small-arms.

VIII.—There shall not be conveyed in the same carriage with any explosive any lucifer or other matches, fuzes, pipelights, acides, naphtha, paraffine, petroleum to which the Indian Petroleum Act, 1899 (VIII of 1899), or any other Act for the time being in force regarding the importation, possession, and transport of petroleum applies or any other volatile spirit substance liable to give off an inflammable vapour or liable to spontaneous ignition, or, to cause or communicate fire or explosion.

IX.—The consignor shall attach to the consignment note a certificate, or (provided the original is produced for verification) copy of a certificate *signed by the Chief Inspector of Explosives or an Inspector of Explosives* that the explosive, if it is an explosive of class 3 or 4, is of the standard purity; and further in the case of dynamite, and all nitroglycerine compounds, that there are no signs of exuded nitroglycerine or of liquefaction. The consignor shall also certify that the explosive has been packed in accordance with the packing rules in force in England or in British India.

Legislative change.

The words "*signed by the Chief Inspector of Explosives or an Inspector of the Explosives*" were substituted for the words "signed by an Officer authorised by the Local Government in this behalf," by the Government of India Notification No. 4219—20, 15th June, 1909.

X.—In the case of explosive under classes 3 and 4 the outer packages shall be marked with the date of the manufacture of the explosives. The abovementioned certificate shall contain sufficient information to admit of all packages being easily recognised.

XI.—The certificate referred to in Rule 13 (IX) shall be valid for six months after date, if the examination has been made between the 1st August and 31st March, but any Railway Administration which accepts dynamite and other nitro-glycerine compounds for transport may demand a fresh certificate for these explosives if presented for conveyance between 1st April and 31st July (both inclusive).

Legislative change.

"1st August" substituted for 15th October by the Government of India Notification No. 4219—20, 15th June 1909.

"31st July" substituted for the 15th October, by the Government of India Notification No. 4219—20, 15th June 1909.

XII.—Packages containing dynamite and other blasting explosives of the 3rd (nitro-compound) class, or explosives of the 4th (chlorate-mixture), 5th (fulminate) classes or of the 1st Division of the 7th (firework) class shall be stowed in one layer only and secured so as to prevent movement during transit, and the gross load in any one wagon shall not exceed 3 tons;

Provided that, if the packages of explosive are in rectangular form and are properly secured so as to prevent movement during transit, they may be stowed in any number of layers not exceeding five, and the gross load in any one wagon shall not exceed 5 tons.

XIII.—No explosive of the 5th (fulminate) class or of the 3rd Division of the 6th (ammunition) class, or of the 7th (firework) class shall be carried in the same train with any explosive not of the class and division to which it belongs, unless it be sufficiently separated therefrom to prevent any fire or explosion which may take place in one such explosive being communicated to another.

XIV.—Wagons used for the carriage of explosive shall be examined to see that they are spark-proof, and have been cleaned out before they are loaded. Hair, cloth, hides, or other suitable materials shall be spread on the floor of the wagon and between each layer of packages, except when the packages are covered with gunny or felt, or contain safety cartridges for small-arms packed in tin-lined service-pattern boxes.

XV.—Wagons containing explosives shall be loaded and unloaded on sidings distant as far as possible from the station buildings.

XVI.—Packages containing explosives other than those referred to in Rule 13 (XII) shall not be stored in more than three layers one above the other. But if the packages are in rectangular form and of uniform size (provided they are double packages, and are so secured as to prevent movement during transit) they may be packed in five layers one above the other. But in the case of safety cartridges for small-arms packed in tin-lined service-pattern boxes, there is no restriction. Subject to the provisions of Rule 11 (III), the loading and unloading of explosives when once begun shall be diligently proceeded with until the same is completed.

XVII.—When the train is being marshalled, wagons loaded with explosives may be shunted by a locomotive, if they are separated from the engine by not less than three wagons containing no explosive nor easily inflammable substance. This precaution is not necessary with wagons specially constructed for the carriage of explosives. The speed of these movements shall be restricted to five miles an hour; they shall be superintended by a duly authorised officer, who shall be held responsible for the observance of these orders. Flying shunts are strictly prohibited.

XVIII.—Wagons containing explosives shall be placed at the end of the train away from the locomotive, and shall be close-coupled to one another as well as to the adjoining wagons and shall be preceded and followed by three wagons not loaded with explosives or other traffic of an inflammable nature.

Provided as follows:—

(*a*) on the Darjeeling-Himalayan Railway, wagons containing explosives and adjoining wagons need not be close-coupled to one another; and

(*b*) on the Nilgiri Railway only one wagon need intervene between the locomotive and wagons containing explosives.

XIX.—If the wagons employed in the transport of explosives are provided with brakes, other than iron brakes, the brakes thereon shall on no account be worked while the wagons are running with a train, nor shall brakes other than iron brakes, on vehicles immediately adjoining such wagons be worked while such wagons are so running.

XX.—Wagons shall in every case be locked when loaded with explosives.

XXI.—All operations connected with the transhipment of explosives at junction stations shall take place during daylight.

Penalty.

14. Whoever commits a breach of any of the foregoing rules relating to the mode of conveyance of explosives shall be punishable with a fine which may extend to Rs. 100.

IMPORTATION.

License when required for importation.

15. Subject to the following provisos, an explosive shall not be imported by sea or land into British India, except under and in accordance, with the conditions of a license to import the explosive.

Provided that any explosives may be imported by sea, previous to the grant of an importation license, in accordance with rules I, II, III, and IV of this rule.

I.—Any explosive other than an explosive specified in rule 18 may, previously to the grant of license to import if it is included in a list published under cl. (1) of rule 9 and for the time being in force, and if it is certified to be of British manufacture or, if not of British manufacture, if it is imported from the United Kingdom and covered by the certificate granted by one of His Majesty's Inspectors of Explosives in England, be landed in accordance with such regulations as the Local Government may prescribe in this behalf, and be stored in a place set apart by the Local Government for this purpose, or in any private magazine declared by the Local Government to be suitable therefor.

II.—Any such explosive of British manufacture may also be transported by rail to any such private magazines previously to the grant of a license to import.

III.—The Governor-General-in-Council may extend to any such explosive not of British manufacture regarding which he is satisfied that it has been manufactured under adequate official supervision the privilege of landing granted by rule 1, but such explosive may not be transported by rail until an importation license has been granted.

IV.—Before any explosive is landed under rules I and III, the consignee shall give to the Chief Customs Officer of the Port such undertaking, with or without security, as the said officer thinks sufficient, to obey, in the event of the explosive failing to satisfy the prescribed tests, such directions as to its disposal as the Local Government may see fit to prescribe.

If samples are taken, the procedure shall be that described in rule 23.

Provided, also, that explosives of British manufacture may be imported by land, previous to the grant of an importation license, in accordance with rules V and VI of this rule.

V.—Explosives (except those specified in rule 18) included in a list published under rule 9 (1), and certified to be of British manufacture, may, previously to the grant of a license, be imported and conveyed under such conditions as the Local Government may prescribe, to a magazine appointed in this behalf by the Local Government.

VI.—Before an explosive is imported under rule V, the consignee shall give to the Magistrate of the District in which the magazine appointed under rule V, is situate, or to the Commissioner of Police if such magazine is situate in a Presidency town or Rangoon, such notice of his intention to import the explosive as the Local Government may prescribe ; and shall give such undertaking, with or without security, as the said District Magistrate or Commissioner of Police may require, that the will, in the event of the explosive failing to satisfy the prescribed tests, comply with such directions as to its disposal as the Local Government may issue.

If samples are taken, the procedure laid down in rule 24 shall be followed.

Penalty.

16. Whoever imports an explosive in contravention of rule 15 shall be punishable with fine which may extend to three thousand rupees.

Ports at which importation is lawful.

17. An explosive shall not be imported by sea except at one of the ports of Calcutta (including Moyapur and Diamond Harbour), Madras, Bombay, Rangoon, Calicut, Karachi, Aden, (*in the case of the explosive referred to in rule 18*) *Chittagong* and, (in the case of crackers only) Negapatam and Moulmein. But a license to import an explosive by sea from Rangoon into the port of Akyab, Sandoway, Kyoukphyoo, Tavoy, Mergui, or Victoria Point as the case may be, may be granted by the Magistrate of the district in which such port is situated. The fee payable in respect of each such license shall be one rupee, and the license shall be in Form A in the schedule here to annexed.

Legislative change.

The words "*in the case of the explosive referred to in Rule 18 Chittâgong*" were added by the Supreme Government Order No. 10134-31, 6th Dec. 1907.

Grant of licenses for importation in certain cases.

18. If the explosive is gunpowder or an explosive of the 1st division of the 6th (ammunition) class or of the 7th (firework) class, the license to import the same may be granted :—

(*a*) If the importation is by sea, by the Commissioner of Police of Calcutta, Madras, Bombay or Rangoon, or the District Magistrate of Calicut, Karachi, Aden, Chittagong, Negapatam, or Moulmein, as the case may be, and

(*b*) If the importation is by land, by the officer appointed to grant licenses under the rule 21.

The word Chittagong—was added by the Supreme Government Order No. 10134—31, 6th December 1907.

Fees for licenses granted under Rule 18.

19. The fee payable in respect of each such license shall be Rs. 10 : but if an explosive imported under a license into a British port is exported thence to another British port named in the rule 17, the necessary license for such re-import may be granted on payment of a fee of one rupee instead of Rs. 10.

Grant of licenses for importation by sea in cases not provided for by rule 18.

20. Licenses for the importation by sea of any explosives other than those specified in rule 18 shall be granted by the Local Government or by some other officer specially authorised by the Local Government in this behalf.

Grant of licenses for importation by land and fees for such licenses.

21. Licenses for the importation of explosive into British India by land shall be granted by the Magistrate of the District to which the explosives are consigned, or, if the explosives are consigned to a Presidency town or Rangoon, by the Commissioner of Police. The fee payable in respect of each such license shall be Rs. 10.

Conditions for granting licenses under Rule 20.

22. No license shall be granted for the importation of any explosives of the description referred to in rule 20, unless—

(*a*) it is an explosive authorized for manufacture in or importation into the Untied Kingdom for general sale

(*b*) its importation is recommended by the Chief Inspector of Explosives with the Government of India, and

(*c*) if it is an explosive for which a test or examination has been prescribed or under the orders of the Government of India, samples of it taken as hereinafter provided are certified by the Chemical Examiner or some other officer appointed by the Local Government in this behalf to have passed the test or examination from time to time prescribed.

Testing of importations by sea in certain cases.

23. On the arrival in any port at which the importation of explosives is lawful of a ship having on board an explosive other than an explosive of the description referred to in rule 18, such officer as the Chief Customs Officer authorizes in this behalf shall, as soon as may be, proceed on board and shall, if testing of examination is requisite under the last preceding rule, obtain samples of the explosive.

All explosives of which samples are taken for examination shall forthwith be deposited in a place or magazine set apart or notified under rule 15-1 ; and shall not be distributed for use until the importer has received from the following authority notice that it may be so distributed.

The master of the ship shall give to the said officer, without charge, such samples as he may require. The said officer shall affix to each such sample the name of the ship and of the consignee and such other distinguishing marks as he may think necessary, and shall forward the same to the Chemical Examiner or officer, as aforesaid, for report.

The Chemical Examiner or officer as aforesaid, after testing the said samples, shall without delay forward to the licensing authority, through the Chief Customs Officer, a report under his signature certifying whether the explosive has satisfied the prescribed test.

Testing of importations by land in certain cases.

24. When an explosive imported by land has been conveyed to, and deposited in the magazine referred to in rule 15-V, the person owning or being in charge of such magazine shall forthwith, if the testing or examination of the explosive is required by rule 22, deliver free of charge to such officer or person as may be appointed by the Local Government in this behalf such samples as he may require. No explosive of which a sample has been so taken, shall be removed to its destination or distributed for use until the importer or the person in charge of the magazine has received from the licensing authority a notice that it may be so removed or distributed.

The officer or person appointed as aforesaid shall affix to the sample received by him the name of the consignee and such other distinguishing marks as he may think necessary, and shall forward the same for report to the Chemical Examiner or other officer appointed by the Local Government in this behalf.

The Chemical Examiner or such other officer as aforesaid shall, after testing the sample, without delay forward to the licensing authority, through the officer or person from whom he received the sample, a report under his signature certifying whether the prescribed test has been satisfied.

Re-importation from one prescribed port into another.

25. Explosives other than those referred to in Rule 18, which have already undergone the test prescribed by Rules 22 and 23 at the ports o, Calcutta (including Moyapur and Diamond Harbour), Madrasf Bombay, Rangoon, Calicut, Karachi or Aden, may be re-imported by sea into any other of those ports under a license granted under Rule 20 without re-testing, but subject, in the case of such explosives as are mentioned in Rule 13, Clause IX, to the production of the certificate prescribed in that clause.

" Explosives, other than those referred to in rule 18, which have undergone the test prescribed by the rules made by the Governor of the Straits Settlements in Council under the Explosives Ordinance, 1899, to regulate the manufacture, use, sale, storage, transport, importation and exportation of explosive substances, may be imported by sea from Penang into the Port of Victoria Point under a license granted under rule 20 without re-testing, but subject, in the case of such explosives as are mentioned in rule 13, clause IX, to the production of a certificate as provided by the rule in force in the Straits Settlements."

Such *certificates* shall be valid for six months after date, if the examination has been made between the *1st August* and 31st March; but in the case of dynamite, a fresh certificate may be demanded if the consignment is imported between the 1st April and *31st July* (both inclusive).

"Explosives, other than those referred to in rule 18, which have already undergone the test prescribed by rules 22 and 23 at the port of Rangoon, may also be re-imported into the ports of Akyab, Sandoway, Kyaukpyu, Tavoy, Mergui, or Victoria Point. under a license granted under rule 17 without re-testing, but subject to the conditions laid down in the foregoing paragraphs of this rule relating to the production of a certificate in the case of explosives mentioned in rule 13, clause IX."

Legislative change.

(*a*) Para 2 was inserted by the Government of India Notification, No. 2721—13, dated the 14th April 1909.

(*b*) For the word "certificate" at the beginning of the third paragraph the word "certificates" shall be substituted; (*Ibid.*)

(*c*) 1st August and 31st July substituted for 15th October, in para 3 by the Government of India Notification No. 4219—20, 15th June 1909.

(*d*) Para 4 was inserted by the Government of India Notification, No. 2721—13, dated the 14th April 1909.

Duration of license granted under Rules 20 & 21.

26. The period for which a license to import an explosive, granted under Rules 20 and 21, shall continue in force shall not exceed such period as may seem necessary to the authority granting the license.

Fees for licenses granted under Rule 20.

27. The fee payable on a license granted under Rule 20 shall be Rs. 10, but if any explosive imported under a license into a British port is exported thence to another British port named in Rule 17, the necessary license for such re-import may be granted on payment of a fee of one rupee instead of Rs. 10.

Form of licenses under Rules 18, 20, & 21.

28. Every license granted under Rules 18, 20, and 21, shall be in Form A in the Schedule hereto annexed, and shall be subject to the conditions therein prescribed, and also to such additional conditions with respect to the time and place of unloading, landing, delivery and conveyence of the explosives, and such other conditions as may in each case be thought by the licensing officer to be necessary for the public safety or in the interest of the State.

Penalty.

29. Whoever commits a breach of any condition, subject to which a license under Rules 18, 20, and 21 is granted, shall be punishable with fine which may extend to three thousand rupees.

Power of inspection, search, seizure etc.

30. (1) Any of the officers mentioned in cl. (2) of this rule may, within the areas, respectively specified in that clause, but subject to the provisions of the Indian Arms Act, 1878 (XI of 1878), and of any rules for the time being in force thereunder, in cases to which that Act applies,—

(*a*) enter, inspect and examine any carriage or vessel in which an explosive is being transported or imported under a license granted under these rules or any prior rules made under the Indian Explosives Act, 1884, (IV of 1884), to believe that an explosive has been or is being transported or imported in contravention of the said rules or Act, and may enter, inspect and examine any magazine or place in which explosives are stored under the provisions of Rule 15;

(*b*) search for explosives in any such carriage, vessel, magazine or place;

(*c*) take samples of any explosives found therein, on payment of the value thereof, if payment can be made at the time the samples are taken; and

(*d*) seize, detain, remove and, if necessary, destroy or otherwise render harmless any explosive found therein in respect of which he has reason to believe that any of the provisions of the said rules or Act have been contravened.

(2) The officers and areas referred to in clause (1) of this rule are :—

OFFICERS.	AREAS.
The Chief Inspector and Inspectors of Explosives.	In all parts of British India.
All District Magistrates.	Within their respective districts.
All Magistrates subordinate to the District Magistrates.	Within the areas respectively subject to their jurisdiction.
The Commissioner of Police, and all Police-Officers of rank not below that of Inspector, if specially deputed in this behalf by the Commissioner of Police.	In Presidency towns and Rangoon.
All Police-Officers of rank not below that of Inspector.	Within the respective areas over which their authority extends.

(3) Whenever the Chief Inspector or an Inspector of Explosives, or any Magistrate, subordinate to the District Magistrate, or any Police-officer seizes, detains or removes any explosives under this rule, he shall report the fact to the District Magistrate or (in a Presidency town or its suburbs or in Rangoon) the Commissioner of Police.

(4) Neither the Chief Inspector nor an Inspector of Explosives, nor any Magistrate subordinate to the District Magistrate nor any Police officer shall under these rules destroy or otherwise render harmless any explosive without the previous sanction of the District Magistrate or (in a Presidency town or its suburbs or in Rangoon) the Commissioner of Police unless the matter appears urgent and fraught with serious public danger.

(5) Whenever any officer destroys any explosive or otherwise renders it harmless, he shall take and keep a sample thereof, and shall, if required, give a portion of the sample to the person owning the explosives or having the same under his control at the time of seizure; and whenever any officer other than the District Magistrate or Commissioner of Police so deals with any explosive, he shall report the circumstances to the District Magistrate or (in a Presidency town or its suburbs or in Rangoon) the Commissioner of Police. K

GENERAL.

Forfeiture of licenses.

31. Every license granted under these rules shall be liable to be forfeited on breach of any of the conditions subject to which it is granted.

Exemption from penalties of persons carrying on business of deceased or disabled license.

32. If a person licensed to import an explosive dies or becomes bankrupt or becomes mentally incapable or otherwise disabled, the person carrying on the business of such licensee shall not be liable to any penalty or forfeiture under the Indian Explosives Act, 1884 (IV of 1884), or the rules thereunder for acting under the license during such reasonable time as may be necessary to allow him to make an application to the authority granting the license for a new license in his own name during the currency of the unexpired portion of the original license. Such new license shall be granted on payment of one rupee.

Method of levying fees.

33. All fees chargeable for licenses under these rules shall ordinarily be levied by means of impressed stamps. An application for the grant or the renewal of a license shall bear the proper stamp; provided that, if it is refused, the value of the separate stamp (if any) which may have been already provided by the applicant for the desired license or renewed license, minus the deductions prescribed by S. 54 of the Indian Stamp Act, 1899 (II of 1899), may be refunded to the applicant. An application should not be made on the stamped paper intended for the license or renewed license; but, where this has been wrongly done, the value of the stamp may be refunded minus-

(i) the value of the stamp which should have been affixed to the application and,

(ii) the deductions prescribed as aforesaid.

Where the fees leviable under these rules have been made over to any local body, the fees shall be paid in such manner as that local authority may from time to time direct.

Grant of duplicate licenses.

34. When a license granted in accordance with these rules is lost, or accidentally destroyed, a duplicate may be granted to the licensee on payment of a fee of eight annas.

Production of licenses.

35. Any person holding a license or acting under a license granted in accordance with these rules, shall be bound to produce the same when called upon to do so by any Magistrate, or by any Police officer in charge of a Police station, or by any Police officer of higher rank.

Control over officers.

36. All Magistrates or other authorities acting under these rules shall perform their duties subject to the control of their executive superiors and of the Local Government.

Power to extend effect of license.

37. Any authority empowered to grant a license under the foregoing rules may, if he thinks fit, direct by an order written on the license that it shall have the effect of a like license under the Indian Arms Act 1878 (XI of 1878).

Importation without license.

38. Any persons lawfully entitled under the Indian Arms Act, 1878 (XI of 1878), or the rules thereunder, to possess any explosive coming under the head of ammunition, as defined in that Act, may import without license under these rules any such explosive in such quantities as may be prescribed by that Act or the rules thereunder, or, when no quantities are prescribed, in reasonable quantities for his own private use; but when an explosive is so imported the Collector of Customs or any other officers empowerd by the Local Government in this behalf by name or by virtue of his office may at any time detain such explosive until he receives the orders of the Local Government thereon.

FORM A.

(See Rules 18, 20, 21 and 28.)

Fee—Ten Rupees in Stamps.

License to import Explosives.

Name, etc., and address of license-holder.	Number of packages.	Explosive.			Purpose for which required.	Destination.	Period for which the license is valid.
		Description.	Weight.	Number.			
							From_____th of_____to the _____th of_____190 .

The_____of_____

_____190 .

Seal.

(Signature)

_____of_____

Conditions.

1. This license is given subject to the provisions of the Indian Explosives Act, 1884 (IV of 1884), and the rules thereunder. Certain general rules, [1] are quoted separately below.

(Note).

1.—General rules.

1. For the general rules, see Rules 31—35, *supra*.

2. This license shall become void after expiry of the period named thereon.

3. This license is valid for importation only ; if the articles named herein are to be transported to any place outside the $\frac{\text{Presidency-town}}{\text{1 town of}}$, they must be protected by a transport license, to be issued in accordance with the rules under the Indian Arms Act, 1878 (XI of 1878) except in the case of explosives despatched to places or magazines set apart or notified under the proviso to rule 15.

4. On the outside of each package there shall be affixed in conspicuous characters by means of a brand or securely attached label or mark the word "Explosive," followed by the name of the explosives or other description of the contents and the name and address of the owners or senders.

B.—RULE FOR TESTING EXPLOSIVES, ETC.

See Appendix II.

[Govt. of India Notn. No. 4554—4, dated the 31st May 1907.]

C.—RULES AS TO THE TRANSPORT OF EXPLOSIVES.

For————————————in,

(*a*) the Port of Bombay	...	See Bom. Govt. Gaz. 1898, Pt. I—p. 2009. ————————— 1901, ————p. 608.
(*b*) the Port of Aden	...	See ————————— 1901, Pt. I—p. 2525.
(*c*) the Port of Karachi	...	See ————————— 1901, Pt. I—p. 1123.
(*d*) the Port of Madras	...	See Mad. Rules and Orders.
(*e*) Bengal	...	See Supplementary rules by the Governor-General-in-Council. See Cal. Gaz. Pt. I—p. 1105.
As to how far these local rules are still in force	...	See Gazette of India, 1907, Pt. I—p. 405.

3.—"2 (b)."

Fee for licenses to possess explosives.

(*a*) No. 518, *dated the 19th April, 1893.*—In exercise of the powers conferred by section 5, sub-section (2), clause (*b*), of the Indian Explosives Act (IV of 1884), and in modification of the rules made by the various Local Governments thereunder, the Governor-General in Council is pleased to make the following rule as to the fee to be charged for license to posses explosives granted to contractors, cultivators and other persons :

1. No fee shall be charged for licenses granted to contractors, cultivators or other persons to possess gunpowder, fuzes or other explosives in reasonable quantities when the same are proved to the satisfaction of the officer granting the license to be required *bona fide*, in the case of license granted to contractors, for blasting purposes, and in the case of licenses granted to cultivators or other persons, for blasting purposes in connection with agricultural works or works of public utility.

2. Home Department Notification No. 1989, dated the 25th July 1888, is hereby cancelled. (See Gazette of India, 1893, Pt. I, p. 211.)

(*b*) For Notification as to fee be charged under cl. (*b*) in the Presidency of Bombay see Bom. Rules and Orders.

(*c*) For Notification in the Punjab, see Punj. Rules and Orders. **M**

Power for Governor General in Council to prohibit the manufacture, possession or importation of specially dangerous explosive.

6. (1) Notwithstanding anything in the rules under the last foregoing section, the Governor-General in Council may, from time to time, by notification in the Gazette of India,—

(*a*) [1] prohibit, either absolutely or subject to conditions, the manufacture, possession or importation of any explosive which is of so dangerous a character that, in the opinion of the Governor-General in Council, it is expedient for the public safety to issue the notification ; and

(*b*) cancel any notification under this section.

(2) The officers of sea customs at every port shall have the same power in respect of any explosive with regard to the importation of which a notification has been issued under this section and the vessel containing the explosive as they have for the time being in respect of any article the importation of which is prohibited or regulated by the law relating to sea customs and the vessel containing the same; and the enactments for the time being in force relating to sea customs or any such article or vessel shall apply accordingly.

(3) Any person manufacturing, possessing or importing an explosive in contravention of a notification issued under this section shall be punished with fine which may extend to three thousand rupees, and, in the case of importation by water, the owner and master of the vessel in which the explosive is imported shall, in the absence of reasonable excuse, each be punished with fine which may extend to three thousand rupees.

(Notes).

1.—"Prohibit, etc."

Manufacture, possession and importation of acetylene.

No. 2289, dated the 31st August, 1900—In exercise of the powers conferred upon him by S. 6 of the Indian Explosives Act, 1884 (IV of 1884), the Governor-General in Council is pleased to prohibit absolutely the manufacture, possession and importation of such acetylene as is declared to be an explosive by notification of the Government of India, in the Home Department, Public, No. 1747, dated the 11th August, 1899. (See Gazette of India, 1900, Pt. I. p. 534). **N**

Power to make rules conferring powers of inspection, search, detention and removal.

7. (1) The Governor-General in Council, or the Local Government with the previous sanction of the Governor-General in Council, may make [1] rules consistent with this Act authorising any officer, either by name or in virtue of his office—

(*a*) to enter, inspect and examine any place, carriage or vessel in which an explosive is being manufactured, possessed, used, sold, transported or imported under a license granted under this Act, or in which he has reason to believe that an explosive has been or is being manufactured, possessed, used, sold, transported or imported in contravention of this Act or of the rules made under this Act;

(*b*) to search for explosives therein ;

(*c*) to take samples of any explosive found therein on payment of the value thereof ; and

(*d*) to seize, detain, remove and, if necessary, destroy any explosive found therein.

(2) The provisions of the Code of Criminal Procedure relating to searches under that Code shall, so far as the same are applicable, apply to searches by officers authorized by rules under this section

(Notes).

1.—"Rules."

(1) **Rules to regulate manufacture, possession and sale of explosives.**
For—, see notes under S. 5, *supra* and Appendix I, *infra*. **O**

(2) **Rules to regulate, transport and importation of explosives.**
For—, see notes under S. 5, *supra*, and Appendix II, *infra*. **P**

(3) **Rules appointing officers or giving power to appoint officers for the purpose of this section.**
For--, see Gaz. of India, 1897, Pt. I, p. 603. **Q**

(4) **Burma.**
For rules made by the Lieutenant-Governor of—, see S. 5, *supra*. **R**

(5) **Bombay.**
For rules for—, see Bur. Rules and Orders. **S**

(6) **Madras.**
For rules for—, see Mad. Rules and Orders. **T**

(7) **United Provinces.**
For rules for the—see U.P. Rules and Orders. **U**

(8) **Powers conferred on Chief Inspector of Explosives.**
No. 6296, dated the 13th December, 1901:—In exercise of the power conferred by S. 7 of the Indian Explosives Act, 1884 (IV of 1884). the Governor-General-in-Council is pleased to make the following rule in supersession of the rule published with Home Department Notification No, 660, dated the 23rd March, 1899, and modified by Home Department Notification No. 888, dated the 27th March, 1900, namely :—

Rule.

The Chief Inspector or Inspector of Explosives with the Government of India may, subject to the provisions of the Indian Arms Act, 1878, (XI of 1878), and of any rule thereunder in cases to which that Act applies, in any part of British India—

(*a*) enter, inspect and examine any place, carriage or vessel in which an explosive is being manufactured, possessed, used, sold, transported or imported under a license granted under the Indian Explosives Act, 1884 (IV of 1884), or in which he has reason to believe that an explosive has been or is being manufactured, possessed, used, sold, transported or imported in contravention of that Act or of the rules under that Act ;

1.—"Rules"—(Concluded).

(*b*) search for explosives therein;

(*c*) take samples of any explosives found therein on payment of the value thereof; and

(*d*) seize, detain, remove and, if necessary, destroy or otherwise render harmless and explosive found therein in respect of which he has reason to believe that the provisions of the said Act or of the rules under that Act have been contravened:

Provided as follows:—

(1) Whenever the said Chief Inspector or Inspector of Explosives seizes, detains or removes any such explosive, he shall report the fact to the District Magistrate *or the Commissioner of Police, as the case may be.*

(2) The said Chief Inspector or Inspector of Explosives shall not destroy or otherwise render harmless any such explosive without the previous sanction of the District Magistrate *or Commissioner of Police, as the case may be,* unless the mater appears to him urgent and fraught with serious public danger; and in such cases he shall take and keep a sample of the explosive, and shall, if required, give a portion of the sample to the person owning the explosive or having the same under his control at the time of seizure, and shall report the circumstances to the District Magistrate *or Commissioner of Police, as the case mag be.* V

(See Gazette of India, 1901, Pt. I, p. 1907).

Legislative change.

The words "Or Commissioner of Police, as the case may be" were inserted by Notification No. 636, dated the 21st Feb. 1902, see Gazette of India, 1902, Pt. I, p. 152. W

Notice of accidents.

8. Whenever there occurs in or about, or in connection with, any place in which an explosive is manufactured, possessed or used, or any carriage or vessel either conveying an explosive or on or from which an explosive is being loaded or unloaded, any accident by explosion or by fire attended with loss of human life or serious injury to person or property, or of a description usually attended with such loss or injury, the occupier of the place, or the master of the vessel, or the person in charge of the carriage, as the case may be, shall forthwith give notice thereof to the officer in charge of the nearest police-station.

Inquiry into accidents.

9. (1) Whenever, in the opinion of a District Magistrate, Subdivisional Magistrate or any other Magistrate specially empowered by the Local Government in this behalf, an inquiry is necessary into the cause of any accident of the description mentioned in section 8, he may either himself make the inquiry or direct a Magistrate subordinate to himself to make the inquiry.

(2) Any Magistrate making an inquiry under this section shall, for the purposes of conducting the inquiry, have all the powers which he would have in holding an inquiry into an offence under Code of Criminal Procedure.

(3) The powers conferred on a Magistrate by this section may in a Presidency-town be exercised by the Commissioner of Police as well as by any Magistrate specially empowered in this behalf under sub-section (1).

Forfeiture of explosives.

10. When a person is convicted of an offence punishable under this Act or the rules made under this Act, the Court before which he is convicted may direct that the explosive, or ingredient of the explosive, or the substance (if any) in respect of which the offence has been committed, or any part of that explosive, ingredient or substance, shall, with the receptacles containing the same, be forfeited.

Distress of vessel.

11. Where the owner or master of a vessel is adjudged under this Act to pay a fine for an offence committed with, or in relation to, that vessel, the Court may, in addition to any other power it may have for the purpose of compelling payment of the fine, direct it to be levied by distress and sale of the vessel, and the tackle, apparel and furniture thereof, or so much thereof as is necessary.

XLV of 1860.

Abetment and attempts.

12. Whoever abets, within the meaning of the Indian Penal Code, the commission of an offence punishable under this Act, or the rules made under this Act, or attempts to commit any such offence and in such attempts does not act towards the commission of the same, shall be punished as if he had committed the offence.

Power to arrest without warrant persons committing dangerous offences.

13. Whoever is found committing any act for which he is punishable under this Act or the rules under this Act, and which tends to cause explosion or fire in or about any place where an explosive is manufactured or stored, or any railway or port, or any carriage, ship or boat, may be apprehended without a warrant by a Police-officer, or by the occupier of, or the agent of servant of, or other person authorized by the occupier of, that place, or by any agent or servant of, or other person authorized by, the railway administration or conservator of the port, and be removed from the place where he is arrested and conveyed as soon as conveniently may be before a Magistrate.

Saving for manufacture, possession, use, sale, transport or importation by Government.

14. Nothing in this Act shall apply to the manufacture, possession, use, sale, transport or importation of any explosive—

(*a*) by order of the Government, or

(*b*) by any person employed under the Government in the execution of this Act, or as a keeper of a magazine, artizan, soldier, sailor, policeman or otherwise, or enrolled as a volunteer under the Indian Volunteers Act, 1869, in the course of his employment or duty as such. XX of 1869.

Saving of Indian Arms Act, 1878.

15. Nothing in this Act shall affect the provisions of the Indian Arms Act. 1878 : XI of 1878.

Provided that an authority granting a license under this Act for the manufacture, possession, sale, transport or importation of an explosive may, if empowered in this behalf by the rules under which the license is granted, direct by an order written on the license that it shall have the effect of a like license granted under the said Indian Arms Act. XI of 1878.

Saving as to liability under other law.

16. Nothing in this Act or the rules under this Act shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or those rules, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Act or those rules :

Provided that a person shall not be punished twice for the same offence.

Extension of definition of "explosive" to other explosive substances.

17. The Governor General in Council may, from time to time, by notification in the Gazette of India, declare that any substance which appears to the Governor General in Council to be specially dangerous to life or property, by reason either of its explosive properties or of any process in the manufacture thereof being liable to explosion, shall be deemed to be an [1] explosive within the meaning of this Act ; and the provisions of this Act (subject to such exceptions, limitations and restrictions as may be specified in the notification) shall accordingly extend to that substance in like manner as if it were included in the definition of the term "explosive" in this Act.

(Notes).

1.—"Explosive....Act."

(1) **Declaration of acetylene to be an explosive.**

No. 1747, dated the 11th August, 1899.—In supersession of Home Department Notification No. 1670—Public, dated the 9th August 1898, and in exercise of the powers conferred by S. 17 of the Indian Explosives Act, 1884 (IV of 1884), the Governor-General in Council is pleased hereby to declare that acetylene when liquid or when subject to a pressure greater than $1\frac{1}{2}\frac{1}{0}$ atmospheres shall be deemed to be an explosive within the meaning of the said Act.

Provided that acetylene in admixture with oil gas in a proportion not exceeding twenty parts by volume of acetylene in every one hundred parts of the mixture, when subjected to a pressure not exceeding one hundred and fifty pounds to the square inch, shall not be deemed to be an explosive within the meaning of the said Act:

Provided further that the acetylene and oil-gas shall be mixed together in a chamber or vessel before the gases are subjected to compression. (See Gazette of India, 1899, Pt. I, p. 747.) **X**

(2) **Acetylene in admixture with atmospheric air or oxygen gas declared to be an explosive and its manufacture prohibited.**

No. 3291-1, dated the 7th December 1900.—In exercise of the power conferred by S. 17 of the Indian Explosives Act, 1884 (IV of 1884), the Governor-General in Council is pleased hereby to declare that acetylene, when in admixture with atmospheric air or with oxygen gas in whatever proportion and at whatever pressure and whether or not in admixture with other substances, shall be deemed to be an explosive within the meaning of the said Act.

II.—In exercise of the powers conferred by S. 6 of the said Act, the Governor-General in Council is pleased to prohibit the manufacture, possession or importation of such acetylene as is declared by paragraph I of this Notification to be an explosive :

Provided that nothing in this Notification shall apply to acetylene in admixture with air when such admixture takes place only in a burner or contrivance in which the mixture is intended to be burnt :

Provided, also, that nothing in this Notification shall be held to apply to an admixture of acetylene and air which may unavoidably occur in the first use or re-charging of an apparatus properly designed and constructed with a view to the production of pure acetylene. (See Gazette of India, 1900, Pt. I, p. 809.) **Y**

(3) **Rules as to possession, conveyance and sale of Picric acid.**

No. 584—4—10, dated the 2nd October, 1905. In exercise of the power conferred by S. 17 of the Indian Explosives Act, 1884 (IV of 1884), and in supersession of Government of India, Home Department, Notification No. 1606, Public, dated the 31st July 1897, the Governor-General in Council is pleased hereby to delare that :—

I.—Picric acid when in process of manufacture shall (for whatever purpose used or manufactured) be deemed to be an explosive within the meaning of the said Act, subject to the following exceptions :—

(*a*) When the picric acid is mixed with not less than half its own weight of moisture, in every process of a manufacture it shall be exempt from being deemed to be an explosive within the meaning of the said Act.

II.—Picric acid when kept, conveyed, imported or sold shall (for whatever purpose used or manufactured) be deemed to be an explosive within the meaning of the said Act, subject to the following exceptions.

I.—"Explosive....Act—(Concluded).

(*a*) Picric acid with not less than half its own weight of water shall be exempt from being deemed to be an explosive within the meaning of said Act.

(*b*) Picric acid which does not fall within the exemption (*a*), when the quantity does not exceed two thousand pounds in any one ship, boat, carriage, building or place, shall be exempt from being deemed to be an explosive within the meaning of the said Act, provided that such picric is so kept and conveyed as not to be liable, whether under the action of fire or otherwise, to come in contract with any substance specified in the schedule hereto or with any fire or light capable of igniting such picric acid :

Provided, also, that such picric acid when dry is so packed in a substantial barrel or case that the contents cannot escape ; and that no metal other than aluminium, or an alloy containing not less than ninty *per centum* of aluminium, is used in the construction of any package containing such picric acid, and that each barrel or case is legibly marked " Picric acid."

General rules for Transport and Importation of Explosives.

Picric acid when not subject to the above exemptions must be packed and marked as laid down in the rules relating to the packing of explosives prescribed by the Government of India.

III.—Picrates and mixture of picric acid with any other substance (for whatever purpose used or manufactured) shall be deemed to be explosives within the meaning of the said Act, subject to the following exceptions :—

(*a*) A picrate mixed with not less than half its own weight of water shall be exempt from being deemed to be an explosive within the meaning of the said Act.

(*b*) *Picric acid throughly mixed with not less than three times its own weight of*:—

(i) *any hydrous sulphate of soda*,

(ii) *crystalized sulphate of soda, when packed in hermetically closed packages, or*

(iii) *potash alum*,

shall be exempt from being deemed to be an explosive within the meaning of the said Act.

Schedule.

Any of the following metals or metallic oxides, namely, lead, oxide of iron, potash baryta, lime, soda, oxide of zinc, oxide of copper ; and any compound of such metal or oxide (other than a metallic sulphate) ; or any chlorate, nitrate, or other oxidizing agent ; or any other substance declared by a notification of the Government of India to be capable of forming with picric acid a dangerous compound :

Provided that this schedule shall not be deemed to include any metal, or oxide unavoidably formed on any metal, used in the construction of any ship, boat or carriage, or contained in any paint, where the packages containing picric acid are protected from direct contact with such metal or paint. (See Gazette of India, 1905, Pt. I, p, 709.) Z

Procedure for making, publication and confirmation of rules.

18. (1) An authority making rules under this Act shall, before making the rules, publish a draft of the proposed rules for the information of persons likely to be affected thereby.

(2) The publication shall be made in such manner as the Governor General in Council, from time to time, by notification in the [1] Gazette of India, prescribes.

(3) There shall be published with the draft a notice specifying a date at or after which the draft will be taken into consideration.

(4) The authority making the rules shall receive and consider any objection or suggestion which may be made by any person with respect to the draft before the date so specified.

(5) A rule made under this Act shall not take effect if it is made by the Governor General in Council until it has been published in the Gazette of India, and if it is made by the Local Government until it has been published in the local official Gazette.

(6) The publication in the Gazette of a rule purporting to be made under this Act shall be conclusive evidence that it has been duly made, and, if it requires sanction, that it has been duly sanctioned.

(7) All powers to make rules conferred by this Act may be exercised from time to time as occasion requires.

(Notes).

1.—"Gazette of India."

Procedure in publications of draft-rules.

No. 1964-P., dated the 2nd September 1887.—Under section 18, sub-section (2), of the Indian Explosives Act, 1884 (IV of 1884), the Governor General in Council is pleased to prescribe that drafts of proposed rules under the Act shall be published—

(*a*) when the authority making the rules is a Local Government, in one issue of the local official Gazette in English and in such other language or languages as the Local Government may direct; and

(*b*) when the authority making the rules is the Governor General in Council, in one issue of the Gazette of India in English, and in one issue of the local official Gazette (if any) of every Local Government in British India in English and in such other language or languages as the Local Government may direct.

This notification supersedes Home Department Notification No. 1437, dated the 14th August 1885. (See Gazette of India, 1887. Pt. I, p. 448.)

A

APPENDIX I.

[See Government of India Notn., No. 9045-8, dated 29th Nov. 1906.]

SCHEDULE.

FORM A.

(*See Rule 14.*)

[FEE— RUPEES IN STAMPS.]

License to manufacture, possess and sell gunpowder, or small-arm nitro-compound, or an explosvie of the 1st Division of the 6th (Ammunition) Class, or (elsewhere than in villages or other rural areas) an explosive of the 7th (Firework) Class.

[Granted in a Presidency town or its suburbs or in Rangoon by the Commissioner of Police, and elsewhere by the District Magistrate.]

Name, etc., of licensee and place of residence.	Place of business, factory or shop.	Maximum quantity of explosive to be possessed at any one time.	Description and quantity of explosive to be manufactured during the year.	Description and quantity of explosive to be possessed and sold during the year.	Date on which license expires.
1	2	3	4	5	6
					The 31st December 190 .

_____ *Town or District,*
_____ 190 .

Seal

(Signature.)
_____ *of* _____

Conditions.

1. This license is granted subject to the provisions of the Indian Explosives Act, 1884 (IV of 1884) and the rules thereunder.

2. The licensee shall keep records and accounts of all explosives manufactured, of all stock in hand, and of all sales, in such form as the Local Government may from time to time direct.

3. The licensee shall exhibit his stock and his books and records of manufacture and sales to any Magistrate or to any Police Officer not below the rank of Inspector, whenever such Magistrate or officer may call upon him so to do.

4. (1) The explosive shall be manufactured in a tent or lightly constructed building exclusively appropriated for the purpose and separated from any dwelling-house, highway, street, public thoroughfare or public place by the distance—

(*a*) in the case of gunpowder or small-arm nitro-compound, of one hundred yards, or

(*b*) in the case of an explosive of the 1st Division of the 6th (ammunition) class, or of the 7th (firework) class, of fifty yards.

(2) In the case of filling cartridges for small arms the operation may, if preferred, be carried out in the upper room of a building to which the conditions in clause (1) as to distance shall not apply: Provided that no more than five pounds of explosive (except such as may be contained in safty cartridges, shall be in the room where the operation is being carried on.

(3) In all other cases, the manufacture shall be carried on in a one-storeyed building.

5. The number of persons employed in manufacture in any one building or room shall not exceed six, and only persons actually manufacturing or superintending manufacture shall be allowed inside the place of manufacture.

6. No iron or steel implements shall be used in manufacture. Only copper, gun-metal or wooden tools are permissible.

7. All explosives, as manufactured, shall be removed without delay to a safe place of storage, and no explosives shall be allowed to accumulate in the place of manufacture.

8. Manufacture shall only be carried on between sunrise and sunset.

9. No smoking or lights shall be allowed in or near a room where explosives are being manufactured.

10. All sales of explosives under this license must be effected on the premises shown on the face of the license.

11. An explosive shall not be sold to any child apparently under the age of fourteen years, nor shall any child under the age be employed in manufacture.

12. (1) The explosives possessed by the licensee shall be kept in one or other or both of the following modes :—

Mode A, that is to say, in a building or excavation, which is detached from any dwelling-house, and is separated by the distances prescribed in condition No. 4 * from any highway, street, public thoroughfare or public place, and is made and closed so as to prevent unauthorized persons from having access thereto and to secure it from danger from without and is exclusively appropriated to keeping explosives; and

(*a*) such a building must be substantially constructed of brick, stone or concrete, or must be a securely constructed fire-proof safe; and

(*b*) such an excavation must be formed in solid rock, or earth, or in mine refuse not liable to ignition, and must not open into, from or out of any mine, quarry, tunnel or underground place which is in use for the carrying on of any work or for the employment of any person.

* These distances may be reduced to one-half when the building is sorrounded by a traverse as high as the eves of the building.

Mode B, that is to say, in a substantial receptacle (whether or not a fireproofsafes, which is closed and secured so as to prevent unauthorized persons from having access thereto, and is exclusively appropriated to the keeping of explosives, and is placed inside a dwelling-house, or inside a building which is not itself qualified for the keeping of explosives in mode A.

(2) A fireproof safe shall not be used for the keeping of any explosive other than gunpowder or small-arm nitro-compound and cartridges of the 2nd division of the 6th (ammunition) class (not containing their own means of ignition) and made with gunpowder or small-arm nitro-compound, such as cartridges or charges for cannon or blasting purposes.

13. The maximum quantity of explosives allowed to be kept at the same time shall be the following :—

(1) if the only explosive kept be one or more of the following, namely :—

(*a*) gunpowder,

(*b*) small-arm nitro-compound, or

(*c*) ammunition of the 1st division of the 6th class,

the maximum shall be—

	In Mode A. lbs.	In Mode B. lbs.
gunpowder and small-arm nitro-compound, in all ...	Two hundred.	Fifty.
and, in addition, of explosive contained in ammunition of the 1st division of the 6th class	Any quantity.	Any quantity.

(2) if the only explosive kept be manfactured fireworks the maximum shall be—

	In Mode A. lbs.	In Mode B. lbs.
manufactured fireworks ...	Two hundred.	Fifty.

(3) in any other case the maximum shall be—

mixed explosives, including gunpowder, small-arm nitro-compound and manufactured fireworks, etc., in all	Sixty.	Fifteen.
and, in addition, of explosives contained in ammunition of the 1st division of the 9th class	Any quantity.	Any quantity.

Provided that in each of the three cases above-mentioned the aggregate quantity kept on the premises in Mode A and Mode B together may not in any case exceed the maximum quantity which may be kept in Mode A.

14. With respect to a building or excavation used in Mode A, and a receptacle used in Mode B,—

the interior thereof, and the shelves and fittings therein, shall be so constructed, or so lined and covered, as to prevent the exposure of any iron or steel, or the detaching of any grit, iron or steel or similar substance, in such manner as to come into contact with the explosive ;

and such interior, shelves and fittings shall, so far as reasonably practicable, be kept free from grit and otherwise clean ;

and, in the case of any explosive being possessed which is liable to be dangerously affected by water, due precautions shall be taken to exclude water therefrom ;

and all articles or substances of any explosive or highly inflammable nature and all lights, shall be kept at a safe distance from the explosive, and from any room or part of a building, excavation or receptacle containing the same ;

and no person entering any such room or part of a building or any such excavation, or any such receptacle, shall have any iron or steel in his possession, or attached to or on his boots or shoes :

Provided that this condition, so far as it relates to the exposure of iron or steel or similar substances, shall not be obligatory in the case where no explosive is kept other than ammunition of the 1st division of the 6th (ammunition) class.

15. All explosives exceeding five pounds in quantity of the 1st division of the 6th (ammunition) class or of the 2nd division of the 7th (firework) class, and all other explosives exceeding one pound in quantity, shall be kept in a substantial case, bag, canister or other receptacle, made and closed so as to prevent the explosives from escaping :

and, when publicly exposed for sale or when sold, the outermost receptacle containing such explosives shall have affixed the name of the explosives in conspicuous characters by means of a brand or securely attached label or other mark :

Provided that two samples of each kind of firework may be exposed for sale without complying with the foregoing clauses of this condition, if such samples be placed in such a position that no light or fire is, or is likely to be, brought near them.

16. (1) Each description of explosive which may be kept under this license shall be separated by an intervening partition of such substance and character, or by such intervening space, as will effectually prevent explosive or fire in the one communicating with the other :—

(2) Provided as follows :—

(*a*) Gunpowder, small-arm nitro-compund and safety fuzes belonging to the 1st division of the 6th (ammuntion) class may be kept with each other without any intervening partition or space ;

(*b*) the various explosives of the 1st division of the 6th (ammunition) class may be kept with each other without any intervening partition or space;

(*c*) the various explosives of the 7th (firework) class may be kept with each other without any intervening partition or space.

17. *The licensee shall affix to his shop or place of business a signboard as required by Rule 11 of the Rules framed under the Indian Arms Act, 1878 (XI of 1878), and shall post up in his shop a copy of section 28 of that Act.

18. * The licensee shall at the time of purchase endorse upon the license of every purchaser holding a license under Form VIII or IX of the forms prescribed

* These conditions are to be added only when the authority granting this license directs, in persuance of Rule 31, by an order written on the license, that this license shall have the effect of a like license granted under the Indian Arms Act, 1878 (XI of 1878).

under the Indian Arms Act, 1878 (XI of 1878), the following particulars, namely :—

(*a*) the name and address of the person who takes delivery of the articles sold ;

(*b*) the nature and amount of articles sold ; and

(*c*) the date of sale ;

and shall append his signature to the endorsement.

19. A similar endorsement shall be made upon the license of every purchaser holding a license under the Explosives Act for the possession of explosives.

FORM B.

(*See Rule 14.*)

[FEE— RUPEES IN STAMPS.]

License to possess and sell gunpowder, or small-arm nitro-compound, or an explosive of the 1st Division of the 6th (Ammunition) Class or (elsewhere than in village or other rural areas) an explosive of the 7th (Firework) Class.

[Granted in a Presidency town or its suburbs or in Rangoon by the Commissioner of Police, and elsewhere by the District Magistrate.]

Name, etc., of license and place of residence.	Place of business, factory or shop.	Maximum quantity of explosive to be possessed at any one time.	Description and quantity of explosive to be possessed and sold during the year.	Date on which license expires.
1	2	3	4	5
				The 31st December 190 .

_____ *Town or District.*
_____ 190 .

Seal

(Signature.)
_____ *of* _____

Conditions.

1. This license is granted subject to the provisions of the Indian Explosives Act, 1884 (IV of 1884), and the rules thereunder.

2. The licensee shall keep records and accounts of all explosives in stock, and of all sales, in such form as the Local Government may from time to time direct.

3. The licensee shall exhibit his stock and his books and records of sales to any Magistrate or to any Police Officer not below the rank of Inspector, whenever such Magistrate or officer may call upon him so to do.

4. All sales of explosives under this license must be effected upon the premises shown on the face of the license.

5. An explosive shall not be sold to any child apparently under the age of fourteen years.

6. (1) The explosives possessed by the licensee shall be kept in one or other or both of the following modes :—

Mode A, that is to say, in a building or excavation, which is detached from any dwelling-house, and is separated by the prescribed distances,* from any highway, street, public thoroughfare or public place, and is made and closed so as to prevent unauthorized persons from having access thereto and to secure it from danger from without, and is exclusively appropriated to keeping explosives ; and

(*a*) such a building must be substantially constructed of brick, stone or concrete or must be a securely constructed fireproof-safe ; and

(*b*) such an excavation must be formed in solid rock or earth or in mine refuse not liable to ignition, and must not open into, from or out of any mine, quarry, tunnel or under ground place which is in use for the carrying on of any work or for the employment of any person.

Mode B, that is to say, in a substantial receptacle (whether or not a fireproof-safe) which is closed and secured so as to prevent unauthorized persons from having access thereto, and is exclusively appropriated to the keeping of explosives, and is placed inside a dwelling-house or inside a building which is not itself qualified for the keeping of explosives in Mode A.

(2) A fireproof-safe shall not be used for the keeping of any explosive other than gunpowder or small—arm nitro-compound and cartridges of the 2nd division of the 6th (ammunition) class (not containing their own means of ignition) and made with gunpowder or small-arm nitro-compound, such as cartridges or charges for cannon or blasting purposes.

7. The maximum quantity of explosives allowed to be kept at the same time shall be the following :—

(1) if the only explosive kept be one or more of the following, namely :—

(*a*) gunpowder,

(*b*) small-arm nitro-compound, or

(*c*) ammunition of the 1st division of the 6th class,

the maximum, shall be—

	In Mode A. lbs.	In Mode B. lbs.
gunpowder and small-arm nitro-compound, in all	Two hundred.	Fifty.

* In the case of gunpowder or small-arm nitro-compound one hundred yards.

In the case of an explosive of the 1st division of the 6th (ammunition) class or of the 7th (firework) class, fifty yards :

Provided that these distances may be reduced to one-half when the building is surrounded by a traverse as high as the eaves of the building.

and, in addition, of explosives contained in ammunition of the 1st division of the 6th class	Any quantity.	Any quantity.

(2) if the only explosive kept be manufactured fireworks, the maximum shall be—

	In Mode A. lbs.	In Mode B. lbs.
manufactured fireworks ...	Two hundred.	Fifty.

(3) in any other case the maximum shall be—

mixed explosives, including gunpowder, small-arm nitro-compound and manufactured fireworks, *etc.*, in all	Sixty.	Fifteen.
and, in addition, of explosives contained in ammunition of the 1st division of the 6th class	Any quantity.	Any quantity.

Provided that in each of the three cases above-mentioned the aggregate quantity kept on the premises in Mode A and Mode B together may not in any case exceed the maximum quantity which may be kept in Mode A.

8. With respect to a building or excavation used in Mode A, and a receptacle used in Mode B,—

the interior thereof, and the shelves and fittings therein, shall be so constructed or so lined and covered as to prevent the exposure of any iron or steel, or the detaching of any grit, iron or steel or similar substance, in such manner as to come into contact with the explosive;

and such interior, shelves and fittings shall, so far as is reasonably practicable, be kept free from grit and otherwise clean;

and, in the case of any explosive being possessed which is liable to be dangerously affected by water, due precautions shall be taken to exclude water therefrom;

and all articles or substances of an explosive or highly inflammable nature, and all lights, shall be kept at a safe distance from the explosive and from any room or part of a building, excavation or receptacle containing the same;

and no person entering any such room or part of a building, or any such excavation or any such receptacle, shall have any iron or steel in his possession, or attached to or on his boots or shoes:

Provided that this condition, so far as it relates to the exposure of iron or steel or similar substances, shall not be obligatory in the case where no explosive is kept other than ammunition of the 1st division of the 6th class.

9. All explosives exceeding five pounds in quantity of the 1st division of the 6th (ammunition) class or of the 2nd division of the 7th (firework) class and all other explosives exceeding one pound in quantity shall be kept in a substantial case, bag, canister or other receptacle, made and closed so as to prevent the explosives from escaping ;

and, when publicly exposed for sale or sold, the outermost receptacle containing such explosive shall have affixed the name of the explosives in conspicuous characters by means of a brand or securely-attached label or other mark :

Provided that two samples of each kind of firework may be exposed for sale without complying with the foregoing clauses of this condition, if such samples be placed in such a position that no light or fire is, or is likely to be, brought near them.

10. (1) Each description of explosive which may be kept under this license shall be separated by an intervening partition of such substance and character, or by such intervening space, as will effectually prevent explosion or fire in the one communicating with the other :

(2) Provided as follows :—

(*a*) Gunpowder, small-arm nitro-compound and safety fuze belonging to the 1st division of the 6th (ammunition) class, may be kept with each other without any intervening partition or space ;

(*b*) the various explosives of the 1st division of the 6th (ammunition) class may be kept with each other without any intervening partition or space;

(*c*) the various explosives of the 7th (firework) class may be kept with each other without any intervening partition or space.

11. * The licensee shall affix to his shop or place of business a signboard as required by Rule 1 of the Rules framed under the Indian Arms Act, 1878 (XI of 1878), and shall post up in his shop a copy of section 28 of that Act.

12. * The licensee shall at the time of purchase endorse upon the license of every purchaser holding a license under Form VIII or IX of the forms prescribed under the Indian Arms Act, 1878 (XI of 1878), the following particulars :—

(*a*) the name and address of the person who takes delivery of the articles sold ;

(*b*) the nature and amount of the articles sold ; and

(*c*) the date of sale ;

and shall append his signature to the endorsement.

13. A similar endorsement shall be made upon the license of every purchaser holding a license under the Explosives Act, for the possession of explosives.

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* These conditions are to be added only when the authority granting this license directs, in pursuance of Rule 31, by an order written on the license, that this license shall have the effect of a like license granted under the Indian Arms Act, 1878 (XI of 1878).

FORM C.

(See Rule 14.)

[FEE—EIGHT ANNAS IN STAMPS.]

License to possess gunpowder or small-arm nitro-compound, or an explosive of the 1st Division of the 6th (Ammunition) Class, or (elsewhere than in villages or other rural areas) an explosive of the 7th (Firework) Class.

[Granted in a Presidency town or its suburbs or in Rangoon by the Commissioner of Police, and elsewhere by the District Magistrate.]

Name, etc., of licensee and place of residence.	Description and quantity of explosive to be possessed during the year.	Place, with full details where explosive is to be possessed.	Maximum quantity of explosive to be kept at any one time.	Date on which license expires.
1	2	3	4	5
				The 31st December 190 .

_____ *Town or District.*
_____ 190 .

Seal

(Signature.)
_____ *of* _____

Conditions.

1. This license is granted subject to the provisions of the Indian Explosives Act, 1884 (IV of 1884), and the rules thereunder.

2. The licensee shall keep records and accounts of all explosives in stock, in such form as the Local Government may from time to time direct.

3. The licensee shall exhibit his stock and his books and records to any Magistrate or to any Police Officer not below the rank of Inspector, whenever such Magistrate or officer may call upon him so to do.

4. (1) The explosives possessed by the licensee shall be kept in one or other or both of the following modes :—

Mode A, that is to say, in a building or excavation which is detached from any dwelling-house, and is separated by the prescribed distances * from any high way,

*In the case of gunpowder or small-arm nitro-compound, one hundred yards.

In the case of an explosive of the 1st division of the 6th (ammunition) class or of the 7th (firework) class, fifty yards :

Provided that these distances may be reduced to one-half when the building is surrounded by a traverse as high as the eaves of the building.

street, public thoroughfare or public place, and is made and closed so as to prevent unauthorized persons from having access thereto and to secure it from danger from without, and is exclusively appropriated to keeping explosives ; and

(*a*) such a building must be substantially constructed of brick, stone or concrete, or must be a securely constructed fireproof safe ;

(*b*) such an excavation must be formed in solid rock, or earth, or in mine refuse not liable to ignition, and must not open into, from or out of any mine, quarry, tunnel or underground place which is in use for the carrying on of any work or for the employment of any person.

Mode B, that is to say, in a substantial receptacle (whether or not a fireproof-safe) which is closed and secured so as to prevent unauthorized persons from having access thereto, and is exclusively appropriated to the keeping of explosives and is placed inside a dwelling-house, or inside a building which is not itself qualified for the keeping of explosives in Mode A.

(2) A fireproof-safe shall not be used for the keeping of any explosive, other than gunpowder or small-arm, nitro-compound and cartridges of the 2nd division of the 6th (ammunition) class (not containing their own means of ignition) and made with gunpowder or small-arm nitro-compound, such as cartridges or charges for cannon or blasting purposes.

5. The maximum quantity of explosives allowed to be kept at the same time shall be the following namely,—

(1) if the only explosive kept be one or more of the following namely :—

(*a*) gunpowder,

(*b*) small-arm nitro-compound, or

(*c*) ammunition of the 1st division of the 6th class,

the maximum shall be—

	In Mode A. lbs.	In Mode B. lbs.
gunpowder and small-arm nitro-compound, in all ...	Two hundred.	Fifty.
and, in addition, of explosives contained in ammunition of the 1st division of the 6th class ...	Any quantity.	Any quantity
(2) if the only explosive kept be manufactured fireworks, the maximum shall be—		
manufactured fireworks ...	Two hundred.	Fifty.
(3) in any other case the maximum shall be—		
mixed explosives, including gunpowder, small-arm nitro-compound and manufactured fireworks, etc., in all.	Sixty.	Fifteen.
and, in addition, of explosives contained in ammunition of the 1st division of the 6th class. ...	Any quantity.	Any quantity.

Provided that in each of the three cases above-mentioned the aggregate quantity kept on the premises in Mode A and Mode B together may not in any case exceed the maximum quantity which may be kept in Mode A.

6. With respect to a building or excavation used in Mode A, and a receptacle used in Mode B,—

the interior thereof, and the shelves and fittings therein, shall be so constructed, or so lined and covered, as to prevent the exposure of any iron or steel, or the detaching of any grit, iron, or steel or similar substance, in such manner as to come into contact with the explosive;

and such interior shelves and fittings shall, so far as is reasonably practicable, be kept free from grit and otherwise clean;

and, in the case of any explosive being possessed which is liable to be dangerously affected by water, due precautions shall be taken to exclude water therefrom;

and all articles or substances of an explosive or highly inflammable nature, and all lights, shall be kept at a safe distance from the explosive, and from any room or part of a building, excavation, or receptacle containing the same;

and no person entering any such room or part of a building, or any such excavation, or any such receptacle, shall have any iron or steel in his possession, or attached to or on his boots or shoes:

Provided that this condition, so far as it relates to the exposure of iron or steel or similar substances, shall not be obligatory in the case where no explosive is kept other than (ammunition) of the 1st division of the 6th class.

7. All explosives exceeding five pounds in quantity of the 1st division of the 6th (ammunition) class or of the 2nd division of the 7th (fire work) class, and all other explosives exceeding one pound in quantity, shall be kept in a substantial case, bag, canister or other receptacle, made and closed so as to prevent the explosives from escaping.

8. (1) Each description of explosive which may be kept under this license shall be separated by an intervening partition of such substance and character, or by such intervening space, as will effectually prevent explosion or fire in the one communicating with the other:

(2) Provided as follows:—

(*a*) gunpowder, small-arm nitro-compound and safety fuzes belonging to the 1st division of the 6th (ammunition) class may be kept with each other without any intervening partition or space;

(*b*) the various explosives of the 1st division of the 6th (ammunition) class may be kept with each other without any intervening partition or space;

(*c*) the various explosives of the 7th (firework) class may be kept with each other without any intervening partition or space.

9. The licensee shall at the time of purchase have the following particulars endorsed upon his license by the vendor from whom he purchases, and under the vendor's signature, namely:—

(*a*) the name and address of the person who takes delivery of the articles purchased;

(*b*) the nature and amount of the articles purchased, and

(*c*) the date of purchase.

FORM D.

[*See Rule 14.*]

[FEE— RUPEE IN STAMPS.]

License to manufacture, possess and sell, or to possess and sell, or to possess, fireworks in a village or other rural area.

[Granted by the District Magistrate.]

Name, etc., of licensee, and place of residence.	Place of business, factory or shop.	Maximum quantity of fireworks to be possessed at any one time.	Description and quantity of fireworks to be manufactured during the year.	Description and quantity of fireworks to be possessed and sold during the year.	Date on which license expires.
1	2	3	4	5	6
					The 31st December 190 .

_____ *District.*
_____ 190 .

Seal

(Signature.)
_____ *of* _____

Conditions

1. This license is granted subject to the provisions of the Indian Explosives Act, 1884 (IV of 1884), and the rules thereunder.

2. The licensee shall keep records and accounts of all fireworks manufactured, of all stock in hand, and of all sales, in such form as the Local Government may from time to time direct.

3 The licensee shall exhibit his stock and his books of manufacture and sales to any Magistrate or to any Police Officer not below the rank of Inspector, whenever such Magistrate or officer may call upon him so to do.

4. Fireworks shall be manufactured in such place only as may be approved by the District Magistrate, due regard being had to the public safety.

5. All sales of fireworks under this license must be effected upon the premises shown on the face of the license.

6. Fireworks shall not be sold to any child apparently under the age of fourteen years, nor shall any child under that age be employed in manufacture.

7. The manufactured fireworks possessed by the licensee must be kept in a building approved by the District Magistrate, due regard being had to the public safety:

Provided that any quantity not exceeding fifty pounds may be kept inside any other building, if placed in a receptacle exclusively appropriated to the keeping of fireworks.

8. * The licensee shall affix to his shop or place of business a signboard as required by Rule 11 of the Rules framed under the Indian Arms Act, 1878 (XI of 1878), and shall post up in his shop a copy of section 28 of that Act.

FORM E.

(*See Rule 14.*)

[FEE—EIGHT ANNAS IN STAMPS.]

License to possess gunpowder or safety fuze by bona fide *agriculturists.*

[Granted by Mamlatdars or Mahalkaris in the Bombay Presidency.]

Name, etc., of licensees, and place of residence.	Description and quantity of explosive to be possessed during the year.	Place, with full details, where explosive is to be possessed.	Maximum quantity of explosive (not exceeding 100 lbs. gunpowder and 10 safety fuzes) to be kept at any one time.	Date on which license expires.
1	2	3	4	5
				The 31st December 190 .

_____ *District.*
_____ 190 .

Seal

(Signature.)
_____ *of* _____

Conditions.

1. This license is granted subject to the provisions of the Indian Explosives Act, 1884 (IV of 1884), and the rules thereunder.

2. The explosive shall be kept in a substantially constructed uninflammable building approved by such officer as the Local Government may prescribe, or in a fireproof safe separated from any dwelling-house, highway, street, public thoroughfare or public place by the prescribed distances, † and made and closed so as to prevent unauthorized persons from having access thereto and to secure it from danger from without:

Provided that 50 lbs. of gunpowder and 10 safety fuzes may be kept inside a dwelling-house or in any building, other than as last aforesaid, in a receptacle exclusively appropriated to keeping explosive.

* This condition is to be added only when authority granting this license directs, in pursuance of Rule 31 by an order written on the license, that this license shall have the effect of a like license granted under the Indian Arms Act, 1878, XI of 1878.

† In the case of gunpowder, 50 yards.

3. All articles or substances of an explosive or highly inflammable nature shall be kept at a safe distance from the explosive and from any room or part of a building, fireproofsafe or receptacle containing the same, and no person entering such room or part of any building or such safe or as receptacle shall have any iron or steel in his possession or attached to or on his boots or shoes.

4. Neither the building exclusively appropriated for the purpose of keeping the explosive, nor the fireproof-safe or receptacle referred to above, shall have any exposed iron or steel in the interior thereof:

Provided that this condition shall not be obligatory in a building, fireproofsafe, or receptacle in which no explosive, other than an explosive of the 1st division of the 6th (ammunition) class, is kept.

The licensee shall at the time of purchse have the following particulars endorsed upon his license by the vendor from whom he purchases and under the vendor's signature:—

(*a*) the name and address of the person who takes delivery of the articles purchased;

(*b*) the nature and amount of the articles purchased; and

(*c*) the date of purchase.

FORM F.

(*See Rule 16.*)

[FEE—FIVE RUPEES IN STAMPS.]

License to possess explosives generally (other than fulminates).

[Granted in a Presidency town or its suburbs or in Rangoon by the Commissioner of Police, and elsewhere by the District Magistrate.]

Name, etc., of licensee, and place of residence.	Place of business or shop.	Description of explosive.	Maximum quantity of explosive (not exceeding sixty pounds) to be possessed at any one time.	Date on which license expires.
1	2	3	4	5

_____ *Town or District.*

_____ 190 .

Seal.

(Signature.)

_____ *of* _____

Conditions.

1. This license is granted subject to the provisions of the Indian Explosives Act, 1884 (IV of 1884), and the rules thereunder.

2. (1) The explosives shall be kept in a substantially constructed building which is exclusively appropriated for the purpose, and is detached from any dwelling-house, and is situated at a safe distance from any highway, street, public thoroughfare or public place, and is made and closed so as to prevent unauthorized persons from having access thereto and to secure it from danger from without:

(2) Provided that any quantity, not exceeding fifteen pounds of any such explosive, may be kept inside any building not conforming to clause (1) of this condition, if the explosive is placed in a receptacle exclusively appropriated to the keeping of explosives.

3. All articles or substances of an explosive or highly inflammable nature shall be kept at a safe distance from the explosives and from any building or receptacle containing the same.

4. No building exclusively appropriated for the purposes of keeping the explosives, and no receptacle in which the explosives are kept, shall have any exposed iron or steel in the interior thereof.

5. All explosives exceeding one pound in quantity shall be kept in a substantial case, bag, canister or other receptacle, made and closed so as to prevent the explosive from escaping.

6. Each description of explosive which may lawfully be kept under this license shall be separated by an intervening partition of such substance and character, or by such intervening space, as will effectually prevent explosion or fire in the one communicating with the other.

7. The licensee shall at the time of purchase have the following particulars endorsed upon his license by the vendor from whom he purchases, and under the vendor's signature, namely :—

(*a*) the name and address of the person who takes delivery of the articles purchased ;

(*b*) the nature and amount of the articles purchased ; and

(*c*) the date of purchase.

FORM G.

[*See Rule 17 (2).*]

THE INDIAN EXPLOSIVES ACT, 1884.

Form of application for a license for possession of explosives (other than fulminates) in, and sale from, a Magazine.

1. Applicant's Name ... ... " Calling ... ... " Address ... ... NOTE.—In cases where the application is made on behalf of a company, the name, calling and address of the company and the name of the manager or agents, should be given. 2. Situation of the proposed magazine— Presidency or Province ... District ... ... Village	*The replies to be written in this column.*

FORM G—*continued.*

The replies to be written in this column

3. Explosive proposed to be stored—
   Class ... ...
   Division (if any) ... ...
   Name and description ...

NOTE.—The class and division (if any) stated should be in accordance with the classification in the General Rules to regulate the manufacture, possession and sale of explosives.

4. Draft license containing the terms which the applicant proposes to have inserted, and specifying such of the matters stated below as are applicable.

NOTE.--A draft license must be attached to this application and must be accompanied by a plan of the proposed magazine and of the site, with the boundaries thereof drawn to scale.

The plan should also show the distance from the proposed magazine of the room (if any) to be used in connection therewith for the filling of cartridges for small arms with explosives, in pursuance of Rule 30 (1) of the Rules under the Indian Explosives Act, 1884, for the manufacture, possession and sale of explosives, and of the workshop (if any) to be used in connection therewith for the adaptation or preparation of explosives, in pursuance of Rule 30 (2) of the said rules; and, if both a room and workshop are to be used, the distance of the room from the workshop.

The matters referred to above, and required (so far as applicable) to be specified, are as follows :—

(*a*) the boundaries of the land forming the site of the magazine and either any belt of land surrounding the site which is to be kept clear, and the buildings and works from which it is to be kept clear, or the distance to be maintained between the magazine or any part thereof and other buildings and works (for buildings and works here referred to, see 1st column of table of distances appended to these rules) ; and

(*b*) the situation, character and construction of all the mounds, buildings and works on or connected with the magazine, and the distances thereof from each other ; and

(*c*) the nature of the work, if any, to be carried on in connection with the magazine and the place at which such work is to be carried on, and places in the magazine at which explosives, and any articles liable to spontaneous ignition, or inflammable or otherwise dangerous, are to be kept ; and

FORM G—*concluded.*

(*d*) the situation of each building forming part of the magazine in which the explosive is to be kept, and the maximum amount of explosive to be kept in each such building ; and (*e*) any special terms which the applicant may propose by reason of any special circumstances arising from the locality, the situation or construction of any buildings or works, or the nature of any process or otherwise. Remarks	*The replies to be written in this column.*

(*Signature of applicant*) _____

(*Postal address of applicant*) _____

(*Date of application*) _____

FORM H.

[*See Rules 17 (8) and 23 (2).*]

THE INDIAN EXPLOSIVES ACT, 1884.

Distances to be kept clear round a magazine.

Distances from the magazine proposed to be established at { Presidency or Province _____ / District _____ / Village _____

To be kept clear * from the undermentioned buildings and works.

Buildings and Works.	Distances to be kept clear not less than.	Reply.	REMARKS.
1	2	3	4
Room used in connection with the magazine, in pursuance of Rule 30 (1) of the Rules under the Indian Explosives Act, 1884, for the manufacture, possession and sale of explosives.	Yards.		
Workshop used in connection with the magazine, in pursuance of Rule 30 (2) of the Rules under the Indian Explosives Act, 1884, for the manufacture, possession and sale of explosives.†	,,		

* The distances will be required to be kept clear, not merely on the first establishment of the magazine, but during the continuance of the license.

† This rule also applies to two or more magazines kept on the same premises, when such magazines—

(1) belong to the same occupier, or

(2) are so kept by mutual consent of the respective occupiers.

FORM H—*concluded.*

Buildings and Works.	Distances to be kept clear, not less than.	Reply.	REMARKS.
1	2	3	4
Private railway	Yards.		
Highway or public footpath	,,		
Open air public meeting place (such as a market)	,,		
Canal or navigable water	,,		
Dock	,,		
River wall or sea wall	,,		
Pier or jetty	,,		
Reservoir or bunded tank	,,		
Room or workshop in connection with another magazine, store or registered premises.	,,		
Any other room or workshop or any shop ...	,,		
Any other explosive magazine or store for explosives.	,,		
Furnace, kiln or chimney	,,		
Public railway	,,		
Dwelling-house *with* the consent, in writing, of the occupier	,,		
Dwelling-house, *without* such consent ...	,,		
Factory not belonging to Government ...	,,		
Church, chapel or hospital	,,		
Public institution or building	,,		
Government building	,,		
Factory or magazine occupied by the Government of India or any Department under that Government *with* the consent, in writing, of the Government of India or such Department. Ditto, *without* such consent	,,		
Viceregal Residence	miles.		

NOTE.—The applicant for the license should state in the third column whether he is able to observe the distances assigned in the second column, or not. In any case where he is unable to observe the full distance assigned, he should state what distance he can observe, and in the column of "Remarks" should set forth the grounds, if any, upon which he relies as justifying such reduction of distance, *e.g.*, whether the magazine will be protected by mounds, or by the natural features of the ground or otherwise.

(*Signature of applicant*) _____

(*Postal address of applicant*) _____

(*Date*) _____

FORM I.

[*See Rule 17 (9).*]

THE INDIAN EXPLOSIVES ACT, 1884.

Distances to be kept clear round a magazine.

*Distances to be maintained between the magazine and other building and works :—

From every	Not less than yards.
Room used in connection with the magazine, in pursuance of Rule 30 (1) of the Rules under the Indian Explosives Act, 1884, for the manufacture, possession and sale of explosives.	
Workshop used in connection with the magazine, in pursuance of Rule 30 (2) of the Rules under the Indian Explosives Act, 1884, for the manufacture, possession and sale of explosives. †	
Private railway	
Highway or public footpath	
Open air public meeting place (such as a market)	
Canal or navigable water	
Dock	
River wall or sea wall	
Pier or jetty	
Reservoir or bunded tank	
Room or workshop in connection with another magazine, store or registered premises.	
Any other room or workshop, or any shop	
Any other explosive magazine or store for explosives	
Furnace, kiln or chimney	
Public railway	
Dwelling-house, *with* the consent, in writing, of the occupier ...	
Dwelling-house, *without* such consent	
Factory not belonging to Government	
Church, chapel or hospital	
Public institution or building	
Government building	

* The distances will be required to be kept clear, not merely on the first establishment of the magazine, but during the continuance of the license.

† This rule also applies to two or more magazines kept on the same premises, when such magazines—

(1) belong to the same occupier, or

(2) are so kept by mutual consent of the respective occupiers.

Not less than yards.

Factory or magazine occupied by the Government of India, or any Department under that Government, *with* the consent, in writing, of the Government of India or such Department.

Ditto, *without* such consent ... ...

Veceregal Residence ... ...

In the case of any building or work above-mentioned which is so screened from the magazine by the natural features of the ground or by good and sufficient artificial mounds of earth as not to be visible from any part of such magazine, the distance assigned above as that to be observed between such building or work and the magazine may be reduced by one-half.

In the case of any building or work above-mentioned which is so screened from the magazine by an intervening hill, that a line drawn from any part of such building or work to any part of such magazine would pass through such hill, the distance assigned by this schedule as that to be observed between such building and work and the magazine may be reduced by three-fourths; but if a Government Inspector notifies, in writing, that in his judgment the intervening hill, in respect of which such reduction is claimed, is not of a character to justify such reduction, this clause, authorizing such reduction, shall be deemed not to apply in respect of the said building or work.

FORM J.

[*See Rule 17 (14).*]

[FEE—TWENTY RUPEES IN STAMPS.]

License to possess explosives other than fulminates in, and to sell explosives from, a magazine.

[Granted by the Local Government or officer appointed by the Local Government in this behalf.]

Name of licensee, and residence.	Boundaries of the land forming the site of the magazine to which the license applies.	Situation, character and construction of the buildings and works connected with the magazine.	Description of explosives to be possessed.	Amount of explosives to be possessed at the same time in the magazine and within the boundaries of the site thereof.	Date on which license expires.
1	2	3	4	5	6
					The 31st December 190 .

_____
_____190 .

Seal.

(Signature.)

Secretary or

Conditions.

1. This license is granted subject to the provisions of the Indian Explosives Act, 1884 (IV of 1884), and the rules thereunder.

2. The licensee shall keep records and accounts of all explosives in stock and of all sales in such form as the Local Government may from time to time direct.

3. There shall not be at the same time in the magazine any quantity of explosives exceeding the quantity specified in the license.

4. The magazine shall be used only for the keeping of the explosives specified in the license, and of receptacles for, or tools or implements for work connected with, the keeping of such explosives.

5. The interior of the magazine, and the benches, shelves and fittings therein, shall be so constructed or so lined or covered as to prevent the exposure of any iron or steel, and the detaching of any grit, iron, steel or similar substances, in such manner as to come into contact with the explosives ; and such interior, benches, shelves and fittings shall, so far as is reasonably practicable, be kept free from grit and otherwise clean ; and, in the case of any explosive being possessed which is liable to be dangerously affected by water due precautions shall be taken to exclude water therefrom :

Provided that so much of this condition as relates to precautions against the exposure of any iron or steel, and the detaching of any grit, iron, steel or similar substances, shall not be obligatory in a building in which no explosive, other than an explosive of the first division of the 6th (ammunition) class, is kept.

6. The magazine shall have attached thereto a sufficient lightning conductor, which shall be tested at least once during the currency of the license.

7. Before repairs are done to any room or magazine or part thereof, the same shall, as far as is practicable, be cleaned by the removal of all explosives or mixed ingredients thereof, and the thorough washing out of such room, magazine or part; and after such cleaning these conditions shall cease to apply to such room or part of the magazine until any explosive is again taken into it :

Provided that this condition shall not be obligatory in a magazine in which no explosive, other than an explosive of the first division of the 6th (ammunition) class, is kept.

8. Except after such cleaning, all tools and implements used in or in making any repairs to, any part of the magazine shall be made only of wood, copper or brass, or some soft metal or meterial, or shall be covered with some safe and suitable material :

Provided that this condition shall not be obligatory in a magazine in which no explosive, other than an explosive of the 1st division of the 6th (ammunition) class, is kept.

9. Due provision shall be made by the use of suitable working clothes without pockets, or of suitable shoes, or by searching or otherwise, or by some such means, for preventing the introduction into the magazine of fire, lucifer matches or any substance or article likely to cause explosion or fire, or of any grit, iron or steel ; but this rule shall not prevent the introduction of an artificial light of such construction, position or character as not to cause any danger of fire or explosion:

Provided that so much of this condition as applies to the exclusion of grit, iron or steel shall not be obligatory in a building in which no explosive, other than an explosive of the 1st division of the 6th (ammunition) class, is kept.

10. No person shall smoke in any part of the magazine.

11. No person under the age of fourteen years shall be employed in or enter the magazine, except in the presence and under the supervision of some grown-up person, and no explosive shall be sold to any such person.

12. (1) Two or more description of explosives which may lawfully be possessed in a licensed magazine may be possessed in the same magazine if they are separated from each other by an intervening partition of such substance and character, or by intervening space, as will effectually prevent explosion or fire in the one communicating with the other :

(2) Provided as follows :—

(*a*) the various explosives of classes 1 (gunpowder), 2 (nitrate-mixture), 3 (nitro-compound) and 4 (chlorate-mixture), safety fuzes belonging to the 1st division of the 6th (ammunition) class and such of the various explosives of the 2nd division of the 6th (ammunition) class as do not contain any exposed iron or steel, may be kept with each other without any intervening partition or space ;

(*b*) the various explosives of the 1st division of the 6th (ammunition) class may be kept with each other without any intervening partition or space ;

(*c*) such of the various explosives of the 2nd division of the 6th (ammunition) class as contain any exposed iron or steel may be kept with each other without any intervening partition or space ;

(*d*) the various explosives of the 3rd division of the 6th (ammunition) class may be kept with each other without any intervening partition or space ;

(*e*) the various explosives of the 7th (firework) class may be kept with each other without any intervening partition or space.

(3) Save as aforesaid, two or more descriptions of explosives shall not be kept in the same magazine.

13. The licensee, and every person employed in or about the magazine, shall take all due precaution for the prevention of accidents by fire or explosion in the magazine, and for preventing unauthorized persons from having access to the magazine or to the explosives therein, and shall abstain from any act whatever which tends to cause fire or explosion and is not reasonably necessary for the purpose of the work in such magazine.

14. (1) Blasting gelatine or any of its kindred gelatinous nitro-compounds shall not be kept in the magazine after the expiration of three years from the date of its or their importation into British India except with the special sanction of an Inspector of Explosives.

(2) When such sanction has been given, a written certificate, showing the period covered by the sanction, must be obtained from an Inspector of Explosives at each inspection, and must be kept by the licensee at the magazine.

FORM K.

(*See Rule 18.*)

[FEE—TWENTY RUPEES IN STAMPS.]

License to possess explosives (other than fulminates) in a floating magazine.

[Granted by the Local Government.]

Name of licensee, and residence.	Description of limits within which the magazine shall be moored or anchored.	Situation, character and construction of the magazine.	Description of explosives to be possessed.	Amount of explosive to be possessed at the same time in the magazine.	Date on which license expires.
1	2	3	4	5	6

_____ }
_____ 190 . }

Seal

(Signature.)

Secretary.

Conditions.

1. This license is granted subject to the provisions of the Indian Explosives Act, 1884 (IV of 1884), and the rules thereunder.

2. The whole vessel, barge or craft in or on board which the explosives are stored shall be deemed to constitute the magazine.

3. The magazine shall be used only for the keeping of such explosives as may be specified in the license, and of receptacles for, or tools or implements for work connected with, the keeping of such explosives.

4. The interior of the magazine, and the benches, shelves and fittings therein, shall be so constructed or so lined or covered as to prevent the exposure of any iron or steel in such manner, and the detaching of any grit, iron, steel or similar substance in such manner, as to come into contact with the explosives in such magazine; and such interior, benches, shelves and fittings shall, so far as is reasonably practicable, be kept free from grit and otherwise clean.

5. The magazine shall have attached thereto a sufficient lightning conductor, which shall be tested previous to the storage of explosives.

6. No charcoal, whether ground or otherwise, oiled cotton, oiled rags or oiled waste, and no article whatever which is liable to spontaneous ignition, shall be taken into the magazine.

7. Before repairs are done to or in any part of the magazine, it shall, so far as practicable, be cleaned by the removal of all explosives, and by a thorough washing out. After being so cleaned, it shall not be deemed to be a magazine until explosives are again taken into it.

8. There shall be constantly kept in the magazine, affixed in such manner as to be easily read, a copy of the license, and of any special rules that may be issued from time to time for the keeping of explosives in a floating magazine.

9. All tools and implements used in any repairs to or in any part of the magazine shall be made only of wood, or copper, or brass, or some soft metal or material, or shall be covered with some safe and suitable material.

10. No fires, lights or lucifer matches, and no substance or article which is likely to cause explosion or fire, shall be permitted to be at any time in the magazine.

11. Due provision shall be made, by the use of suitable working clothes without pockets, or of suitable shoes, or by searching or otherwise, or by some such means, for preventing the introduction into the magazine of fire, lucifer matches or any substance or article which is likely to cause explosion or fire; and for preventing the introduction of any grit, iron or steel into any part of the magazine where it would be likely to come into contact with explosive; and in any part of the magazine in which any explosive is kept which is liable to be dangerously affected by water, due precautions shall be taken to exclude water from such part; but this condition shall not prevent the introduction of an artificial light of such construction, position or character as not to cause any danger of fire or explosion; and so much of this condition as relates to the exclusion of grit, iron or steel shall not be obligatory in the case of a magazine in which no explosive, other than explosives of the 1st division of the 6th (ammunition) class, is kept.

12. No person shall smoke in any part of the magazine.

13. (1) The licensee shall not employ any vessel, barge or craft to carry an explosive to or from the magazine unless the cabin, hold or other part of the vessel, barge or craft which the explosive is or is to be carried—

(*a*) is constructed without any exposed iron or steel in the interior thereof,

(*b*) contains only explosives, and

(*c*) is closed or otherwise properly covered over:

Provided that clause (*a*) shall not apply in the case of any vessel, barge or craft which carries no explosive other than explosives of the 1st division of the 6th (ammunition) class, or which is specially exempted by an order of the Chief Inspector of Explosives or by an order of the Local Government endorsed on this license.

(2) The licensee shall see that the explosives to be placed on any vessal, barge or craft so employed are loaded, carried and unloaded with all due diligence and with such precautions and in such manner as will sufficiently guard against any accidental ignition.

14. The licensee shall see—

(*a*) that no fire, unprotected light or smoking is allowed while any explosive, other than explosives of the 1st division of the 6th (ammunition) class, is being received or delivered, or while the hatches or door of the magazine, or the hatches or coverings of any vessel, barge or craft alongside containing any such explosive, are open; and

(*b*) that no receipt or delivery of explosive is carried on, and that the hatches or door of the magazine are or is kept closed, when any vessel, barge or craft having on board a fire (other than engine-fires properly banked up) or an unprotected light is alongside a magazine containing an explosive, other than explosives of the the 1st division of the 6th (ammunition) class, or in its immediate vicinity.

15. A person under the age of fourteen years shall not be employed in or enter the magazine, except in the presence and under the supervision of some grown-up person.

16. In the case of the magazine being approachable at low water by carriages, the words "vessel, barge, or craft," in Nos. 13 and 14 of these conditions, shall be taken to include a carriage.

17. (1) Two or more descriptions of explosives, which may lawfully be possessed in a licensed magazine, may be possessed in the same magazine if they are separated from each other by an intervening partition of such substance and character, or by such intervening space, as will effectually prevent explosion or fire in one compartment from extending to another compartment:

(2) Provided as follows :—

(*a*) the various explosives of classes 1 (gunpowder), 2 (nitrate-mixture), 3 (nitro-compound) and 4 (chlorate-mixture), safety fuzes belonging to the 1st division of the 6th (ammunition) class, and such of the various explosives of the 2nd division of the 6th (ammunition) class, as do not contain any exposed iron or steel, may be kept with each other without any intervening partition or space;

(*b*) the various explosives of the 1st division of the 6th (ammunition) class may be kept with each other without any intervening partition or space;

(*c*) such of the various explosives of the 2nd division of the 6th (ammunition) class as contain any exposed iron or steel, may be kept with each other without any intervening partition or space;

(*d*) the various explosives of the 3rd division of the 6th (ammunition) class may be kept with each other without any intervening partition or space;

(*e*) the various explosives of the 7th (firework) class may be kept with each other without any intervening partition or space.

(3) Save as aforesaid, two or more descriptions of explosive shall not be kept in the same magazine.

FORM L.

(*See Rule 20.*)

[FEE—FIVE RUPEES IN STAMPS.]

License to sell Explosives.

[Granted in a Presidency town or its suburbs or in Rangoon by the Commissioner of Police and elsewhere by the District Magistrate.]

Name, etc., of licensee, and place of residence.	Place of business or shop.	Description of explosive to be sold.	Date on which license expires.
1	2	3	4
			The 31st December 190 .

_____ *Town or District.*
_____ 190 .

Seal.

(Signature.)
_____ *of* _____

Conditions.

1. This license is granted subject to the provisions of the Indian Explosives Act, 1884 (IV of 1884), and the rules thereunder.

2. The licensee shall keep records and accounts of all explosives in stock, and of all sales, in such form as the Local Government may from time to time direct.

3. Explosives shall not be sold to any child apparently under the age of fourteen years.

4. All explosives exceeding one pound in weight, when publicly exposed for sale or sold, shall be in a substantial case, bag, canister or other receptacle, made and closed so as to prevent the explosives from escaping ; and the outermost receptacle containing such explosives shall have affixed the name of the explosives with the word " Explosive " added thereto in conspicuous characters by means of a brand or securely attached label or other mark.

TABLE SHOWING DISTANCES WHICH SHOULD ORDINARILY BE KEPT CLEAR ROUND MAGAZINES.

In any case where any of the items enumerated in the first column of this Table is, in the natural features of the ground or by good and substantial artificial mounds of earth or mine refuse, will pass through the intervening ground or mound, the distance from that item (except for when a natural hill so intervenes as to afford a degree of protection which, in the opinion of an reduced to one-quarter. In no case, however, is the distance from a Viceregal Residence to be less

N.B.—*The figures in italics are the distances to be observed when ordinary gunpowder every half pound of such other explosive*

		AMOUNT OF EXPLOSIVE ALLOWED					
		500 lbs.	1,000 lbs.	2,000 lbs.	3,000 lbs.	4,000 lbs.	5,000 lbs.
DISTANCES TO BE KEPT CLEAR FROM—							
Room used in connection with the magazine, in pursuance of Rule 30 (1) of the Rules under the Indian Explosives Act, 1884, for the manufacture, possession, and sale of explosive	*Yds.*	50 *35*	50 *35*	50	51	52	52
Workshop used in connection with the magazine, in pursuance of Rule 30 (2) of the Rules under the Indian Explosives Act, 1884, for the manufacture, possession, and sale of explosives. [*See* note (*b*.)]	,,	,,	75 *50*	100 *75*	101 *90*	102	104
Private railway	,,	,,	,,	,,	,,	,,	,,
Highway or public footpath	,,	,,	,,	,,	,,	,,	,,
Open air public meeting place (such as a market)	,,	,,	,,	,,	,,	,,	,,
Canal or navigable water	,,	,,	,,	,,	,,	,,	,,
Dock	,,	,,	,,	,,	,,	,,	,,
River wall or sea wall	,,	,,	,,	,,	,,	,,	,,
Pier or jetty	,,	,,	,,	,,	,,	,,	,,
Reservoir or bunded tank	,,	,,	,,	,,	,,	,,	,,
Room or workshop in connection with another magazine, store, or registered premises ...	,,	100 *65*	150 *100*	200 *150*	200 *175*	200	200
Any other room or workshop or any shop ...	,,	,,	,,	,,	,,	,,	,,
Any other explosive, magazine or store for explosives	,,	,,	,,	,,	,,	,,	,,
Furnace, kiln or chimney	,,	,,	,,	,,	,,	,,	,,
Public railway	,,	,,	,,	,,	210	215 *200*	225 *210*
Dwelling-house, *with* the consent, in writing, of the occupier	,,	50 *35*	75 *50*	100 *75*	110 *90*	120 *100*	130 *110*
Dwelling-house, *without* such consent ...	,,	100 *65*	150 *100*	200 *150*	240 *175*	280 *200*	320 *255*
Factory not belonging to Government ...	,,	,,	,,	,,	,,	,,	,,
Church, chapel or hospital	,,	,,	,,	,,	,,	,,	,,
Public institution or building	,,	,,	,,	,,	,,	,,	,,
Government building	,,	,,	,,	,,	,,	,,	,,
Factory or magazine occupied by the Government of India or any Department under that Government—							
(1) *with* the consent, in writing, of the Government of India or such Department ...	,,	,,	,,	,,	,,	,,	,,
(2) Do do *without* such consent	,,	880 *585*	1320 *880*	1760 *1320*	1780 *1540*	1805 *1760*	1825 *1790*
Viceregal Residence	*Miles.*	*1*	*1*	*1½*	*1½*	*1½*	*1½*

NOTE.—(*a*) This table furnishes the basis on which applications for licenses will be considered, but Explosives with the Government of India.

(*b*) This rule applies to two or more magazines kept on the same premises—
(1) belonging to the same occupier or
(2) so kept by mutual consent of the respective occupiers.

(*c*) Detonators may be kept in an annexd near to or adjoining a magazine under the
(1) The amount of explosive contained in the detonators must not exceed 100 lbs. (This proportion represents roughly about 41,000 detonators of "sextuple" strength;
(2) The detonator annexed must be so constructed that not less than two feet of masonry the main magazine.

opinion of an Inspector of Explosives, effectively screened from a magazine either by the
of such height that a line drawn from any part of the magazine to any part of the item in question
quantities of one thousand pounds of explosives and under) will be reduced one half: Provided that
Inspector of Explosives, justifies a further reduction, the distance shown in the Table will be
than one mile.

only is to be stored or other explosives up to the equivalent of five thousand pounds of gunpowder,
being reckoned as one pound of gunpowder.

IN THE MAGAZINE (IN POUNDS).

6,000 lbs.	7,000 lbs.	8,000 lbs.	9,000 lbs.	10,000 lbs.	11,000 lbs.	12,000 lbs.	13,000 lbs.	14,000 lbs.	15,000 lbs.	16,000 lbs.	17,000 lbs.	18,000 lbs.
53	53	54	54	55	55	56	56	57	57	58	58	59
105	106	108	109	110	111	112	113	114	115	116	117	118
"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"
200	200	200	200	200	205	210	215	220	225	230	235	240
"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"
" 235 *220*	" 240 *230*	" 250 *245*	" 255	" 265	" 270	" 280	" 285	" 290	" 300	" 305	" 310	" 315
140 *125*	145 *140*	155 *150*	165 *160*	175	180	190	200	205	215	220	230	235
365 *310*	405 *360*	445 *445*	485 *470*	525	560	590	625	655	690	720	750	785
"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"
"	"	"	"	"	"	"	"	"	"	"	"	"
1850 *1820*	1870 *1850*	1800 *1680*	1910 *1905*	1913	1950	1970	1990	2005	2025	2040	2060	2075
1½	1½	1½	1½	1½	1½	1½	1½	1½	1½	1½	1½	1¾

is susceptible to modifications under special circumstances on the advice of the Chief Inspector of

following conditions :—
reckoned in the proportion of not less than 2¼ lbs. of explosives per 1,000 detonators :—
with detonators of greater strength the number would be of course less).
and three feet of air space shall intervene between any detonators in such annexed and the interior of

TABLE SHOWING DISTANCES WHICH SHOULD

		AMOUNT OF EXPLOSIVE ALLOWED					
		19,000 lbs.	20,000 lbs.	22,000 lbs.	24,000 lbs.	26,000 lbs.	28,000 lbs.
DISTANCES TO BE KEPT CLEAR FROM—							
Room used in connection with the magazine, in pursuance of Rule 30 (1) of the Rules under the Indian Explosives Act, 1884, for the manufacture, possession, and sale of explosive.	*Yds.*	59	60	61	62	63	64
Workshop used in connection with the magazine, in pursuance of rule 30 (2) of the Rules under the Indian Explosives Act, 1884, for the manufacture, possession, and sale of explosives [*See* note (*b*)]	,,	119	120	122	124	126	128
Private railway	,,	,,	,,	,,	,,	,,	,,
Highway or public footpath	,,	,,	,,	,,	,,	,,	,,
Open air public meeting place (such as a market)	,,	,,	,,	,,	,,	,,	,,
Canal or navigable water	,,	,,	,,	,,	,,	,,	,,
Dock	,,	,,	,,	,,	,,	,,	,,
River wall or sea wall	,,	,,	,,	,,	,,	,,	,,
Pier or jetty	,,	,,	,,	,,	,,	,,	,,
Reservoir or bunded tank	,,	,,	,,	,,	,,	,,	,,
Room or workshop in connection with another magazine, store, or registered premises ...	,,	245	250	265	280	295	310
Any other room or workshop or any shop ...	,,	,,	,,	,,	,,	,,	,,
Any other explosive, magazine or store for explosives	,,	,,	,,	,,	,,	,,	,,
Furnace, kiln or chimney	,,	,,	,,	,,	,,	,,	,,
Public railway	,,	325	330	345	355	370	380
Dwelling-house, *with* the consent, in writing, of the occupier	,,	245	250	265	280	295	310
Dwelling-house, *without* such consent ...	,,	815	850	920	990	1060	1130
Factory not belonging to Government ...	,,	,,	,,	,,	,,	,,	,,
Church, chapel or hospital	,,	,,	,,	,,	,,	,,	,,
Public institution or building	,,	,,	,,	,,	,,	,,	,,
Government building	,,	,,	,,	,,	,,	,,	,,
Factory or magazine occupied by the Government of India or any Department under that Government—							
(1) *with* the consent, in writing, of the Government of India or such Department	,,	,,	,,	,,	,,	,,	,,
(2) Do. do. *without* such consent	,,	2095	2110	2145	2180	2215	2255
Viceregal Residence	*Miles.*	1¼	1¾	1¾	1¾	2	2

ORDINARILY BE KEPT CLEAR ROUND MAGAZINES—*continued.*

IN THE MAGAZINE (IN POUNDS).

30,000 lbs.	32,000 lbs.	34,000 lbs.	36,000 lbs.	38,000 lbs.	40,000 lbs.	42,000 lbs.	44,000 lbs.	46,000 lbs.	48,000 lbs.	50,000 lbs.	52,000 lbs.	54,000 lbs.	56,000 lbs.
65	66	67	68	69	70	71	72	73	74	75	76	77	78
130	132	134	136	138	140	142	144	146	148	150	152	154	156
”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”
325	340	355	370	385	400	415	430	445	460	475	490	505	520
”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”
395	410	420	435	445	460	475	485	500	510	525	540	550	565
325	340	355	370	385	400	415	430	445	460	475	490	505	520
1200	1265	1330	1395	1460	1525	1590	1655	1720	1785	1850	1915	1980	2045
”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”
2290	2325	2360	2395	2430	2465	2500	2535	2570	2605	2640	2675	2710	2745
2	2¼	2¼	2¼	2½	2½	2½	2¾	2¾	2¾	3	3	3	3¼

TABLE SHOWING DISTANCES WHICH SHOULD

		AMOUNT OF EXPLOSIVE ALLOWED						
		58,000 lbs.	60,000 lbs.	62,000 lbs.	64,000 lbs.	66,000 lbs.	68,000 lbs.	70,000 lbs.
DISTANCES TO BE KEPT CLEAR FROM—								
Room used in connection with the magazine, in pursuance of Rule 30 (1) of the Rules under the Indian Explosives Act, 1884, for the manufacture, possession, and sale of explosive	*Yds.*	79	80	81	82	83	84	85
Workshop used in connection with the magazine, in pursuance of Rule 30 (2) of the Rules under the Indian Explosives Act, 1884, for the manufacture, possession, and sale of explosives [*See* note (*b*)]	,,	158	160	162	164	166	168	170
Private railway	,,	,,	,,	,,	,,	,,	,,	,,
Highway or public footpath ...	,,	,,	,,	,,	,,	,,	,,	,,
Open air public meeting place (such as a market)...	,,	,,	,,	,,	,,	,,	,,	,,
Canal or navigable water	,,	,,	,,	,,	,,	,,	,,	,,
Dock	,,	,,	,,	,,	,,	,,	,,	,,
River wall or sea wall	,,	,,	,,	,,	,,	,,	,,	,,
Pier or jetty	,,	,,	,,	,,	,,	,,	,,	,,
Reservoir or bunded tank	,,	,,	,,	,,	,,	,,	,,	,,
Room or workshop in connection with another magazine, store, or registered premises	,,	535	550	565	580	595	610	625
Any other room or workshop or any shop	,,	,,	,,	,,	,,	,,	,,	,,
Any other explosive, magazine or store for explosives	,,	,,	,,	,,	,,	,,	,,	,,
Furnace, kiln or chimney	,,	,,	,,	,,	,,	,,	,,	,,
Public railway	,,	575	590	605	615	630	640	655
Dwelling-house, *with* the consent, in writing, of the occupier	,,	535	550	565	580	595	610	625
Dwelling-house, *without* such consent	,,	2110	2175	2240	2305	2370	2435	2500
Factory not belonging to Government	,,	,,	,,	,,	,,	,,	,,	,,
Church, chapel or hospital ...	,,	,,	,,	,,	,,	,,	,,	,,
Public institution or building ...	,,	,,	,,	,,	,,	,,	,,	,,
Government building	,,	,,	,,	,,	,,	,,	,,	,,
Factory or magazine occupied by the Government of India or any Department under that Government—								
(1) *with* the consent, in writing, of the Government of India or such Department	,,	,,	,,	,,	,,	,,	,,	,,
(2) Do. do. *without* such consent ...	,,	2780	2815	2850	2885	2920	2925	2990
Viceregal Residence	*Miles.*	3¼	3¼	3½	3½	3½	3¾	3¾

ORDINARILY BE KEPT CLEAR ROUND MAGAZINES—*concluded.*

IN THE MAGAZINE (IN POUNDS).

72,000 lbs.	74,000 lbs.	76,000 lbs.	78,000 lbs.	80,000 lbs.	82,000 lbs.	84,000 lbs.	86.000 lbs.	88,000 lbs.	90,000 lbs.	92,000 lbs.	94,000 lbs.	96,000 lbs.	98,000 lbs.	100,000 lbs.
86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
172	174	176	178	180	182	184	186	188	190	192	194	196	198	200
”	”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”	”
640	655	670	685	700	715	730	745	760	775	790	805	820	835	850
”	”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”	”
670	680	695	705	720	735	745	760	770	785	800	810	825	835	850
640	655	670	685	700	715	730	745	760	775	790	805	820	835	850
2570	2640	2710	2780	2850	2915	2980	3045	3110	3175	3240	3305	3370	3435	3500
”	”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”	”
”	”	”	”	”	”	”	”	”	”	”	”	”	”	”
3025	3060	3100	3135	3170	3205	3240	3275	3310	3345	3380	3415	3450	3485	3520
3¾	4	4	4	4¼	4¼	4¼	4¼	4½	4½	4½	4¾	4¾	4¾	5

APPENDIX II.

[See Government of India Notification No. 4555-4, dated the 31st May 1907.]

[See also, Gazette of India, 1907, Pt. I, p. 405.]

Rules for Testing Explosives.

With reference to Rule 22 of the Rules to regulate the transport and importation of explosives, published with this Notification and in supersession of the Notification of the Government of India, in the Home Department, No. 5529 (Public), dated the 11th October, 1901, the Governor-General in Council is pleased to make the following rule on the subject of the test which explosives should be required to pass before their importation is permitted :—

RULE.

Class 1, *Gunpowder Class.*—Gunpowder is not required to pass a test.

Class 2, *Nitrate-mixture Class.*—Nitrate-mixture explosives are not ordinarily required to pass a test. The Local Government, however, or the authorized officer granting the import license under Rules 20 and 21 of the Rules to regulate the transport and importation of explosives, published with this Notification, may in any particular case or class of cases require that a sample of the explosive which is to be imported be sent first to the Chemical Examiner for an analysis of its constituent parts.

Class 3, *Nitro-compound Class.*—It is for explosives of this class that testing is chiefly required in respect to the purity of their composition and their liability to liquefaction or exudation. The tests prescribed for Nitro-compound explosives are contained in Schedule A attached to this rule.

Class 4, *Chlorite-mixture Class.*—See Schedule A for remarks regarding the testing of this class. *

Class 5, *Fulminate Class.*—No test has been laid down for explosives of Fulminate class. *

Class 6, *Ammunition class.*—No test is required for explosives of the first division of this class. If the substances of which explosives of the 2nd and 3rd Divisions are composed have to be tested under the proceeding rules, they will be equally liable to be tested when enclosed in any case or contrivance and thus falling under the ammunition class.

Class 7, *Firework Class.*—Explosives of this class are not required to pass a test.

SCHEDULE A.

Heat Test as applied to Explosives of the Nitro-compound Class.

GENERAL INSTRUCTIONS.

Apparatus required.

1. A water-bath, consisting of a spherical glass or copper vessel [(*a*) Fig. I] of about 8 inches diameter, and with an aperture of about 5 inches ; the bath is filled with water to within a quarter of an inch of the edge. It has a loose cover of sheet copper about 6 inches in diameter (*b*), and rests on a tripod stand about 14 inches high (*c*), which is covered with coarse iron wire gauze (*e*), and is surrounded with a screen of thin sheet tin or copper (*d*). Within the latter is placed an Argand burner (*f*) with glass

* Licenses are not at present given for the importation into British India of any explosives of these classes.

chimney. The cover (*b*) has four holes arranged as seen in Fig. II, No. 4 to receive the regulator, No. 3 the thermometer, Nos. 1 and 2 the test-tubes containing the gun-cotton or other materials to be tested. Around holes 1 and 2 on the under side of the cover are soldered three pieces of brass wire with points slightly covering (Fig. III); these act as springs and allow the test-tubes to be easily placed in position and removed.

* 2. Scheibler's or Page's temperature regulator.

* 3. Two cells of Le Clanché's battery No. 1, } if Scheibler's regulator is used.
* 4. A few yards of insulated copper wire, }

* 5. Test-tubes from $5\frac{1}{4}$ to $5\frac{1}{2}$ inches long, and of such diameter, that they will hold from 20 to 22 cubic centimetres of water when filled to a height of 5 Inches,

6. India-rubber stoppers, fitting the test-tubes and carrying an arrangement for holding the test-paper, *viz.*, a narrow glass tube passing through the centre of the stopper drawn out so as to form a hook, or terminating in a platinum wire hook (Fig. IV).

7. A thermometer, with range not less than from 30° to 212° Fahrenheit.

8. A minute clock.

Materials required.

(*a*) *Test-paper.*—The test-paper is prepared as follows:—45 grains of white maize starch (cornflour), previously washed with cold water, are added to $8\frac{1}{2}$ ounces of distilled water, the mixture is stirred, heated to boiling, and kept gently boiling for 10 minutes; 15 grains of pure potassium iodide (*i.e.*, which has been re-crystallized from alcohol) are dissolved in $8\frac{1}{2}$ ounces of distilled water. The two solutions are thoroughly mixed and allowed to get cold. Strips, or sheets, of best white English filter-papear, weighing, air dry, from 4·1 to 4·6 grammes per 100 square inches, previously washed with water and re-dried, are dipped into the solution thus prepared, weighing, air dry, about 6·5 grammes per 100 square inches, and allowed to remain in it for not less than 10 seconds; they are then allowed to drain and dry in a place free from laboratory fumes and dust. The upper and lower margins of the strips, or sheets, are cut off, and the paper is preserved in well-stoppered or cork bottles *and in the dark.*† The dimensions of the pieces of test-paper used are about $\frac{4}{10}$ inch by $\frac{8}{10}$ inch (10 mm by 20 mm).

(*b*) *Standard tint-paper.*—A solution of caramel in water is made of such concentraation that when diluted one hundred times (10 cc. made up to 1 litre) the tint of this diluted solution equals the tint produced by the Nessler test in 100 cc. water containing 0·000075 grm. of ammonia or 0·00023505 grm. of chloride of ammonium. With this caramel solution lines are drawn on strips of white filter paper ‡ by means of a clean quill pen. When the marks thus produced are dry the paper is cut into pieces of the same size as the test-paper previously described, in such a way that each piece has a brown line across it near the middle of its length, and only such strips are preserved in which brown line has a breadth varying from $\frac{1}{2}$ mm to 1 mm ($\frac{1}{50}$ of an inch to $\frac{1}{25}$ of an inch).

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* This is not absolutely required, as the temperature of the bath can be kept constant by proper attention to the heating flame.

† When a paper is freshly prepared, and as long as it remains in good condition, a drop of dilute acetic acid, put on the paper with a glass rod, produces no coloration. In process of time, however, the stronger the light to which the paper is exposed, the sooner a drop of acid produces a brown or bluish coloration (a single hour of direct sunlight produces a marked effect), and whenever this is the case the paper should be rejected. After preparation the paper should be kept in the dark for a month before being taken into use. After that, if carefully kept in the dark, it will remain good for six months or more, but should be tested from time to time as above.

‡ This paper must be carefully washed with distilled water in the first instance to remove any traces of bleaching matter, and dried.

I.—Testing Dynamite, Blasting Gelatine, and other Explosives of the First Division of the Nitro-compound Class.

A.—DYNAMITE, ETC., ETC.

Nitro-glycerine preparations, from which the nitro-glycerine can be extracted. in the manner described below, *must* satisfy the following test.

This test, however, though at present looked upon as the most important, as far as testing the purity of the nitro glycerine is concerned, is in England only one of several which any given sample of nitro glycerine preparation has to satisfy in order to establish its compliance with the definition in the Authorized List.

Apparatus required.

A funnel 2 inches across (*d*), acylindrical measure divided into grains (*e*). (See sketch.)

Mode of operation.

About 300 to 400 grains of dynamite (*b*) finely divided are placed into the funnel which has previously been loosely plugged by some freshly-ignited asbestos (*a*).

The surface is smoothed by means of a flat-headed glass rod or stopper, and some clean washed and dried Kieselguhr (*c*) is spread over it to the depth of about ¼ inch.

Water is next carefully dropped from a wash bottle upon this Kieselguhr, and when the first portion has been soaked up more is added ; this is repeated until sufficient nitro-glycerine has been collected in the graduated measure (*e*) below.

If any water should have passed through with the nitro-glycerine, it should be removed with a piece of blotting-paper, and the nitro-glycerine, if necessary, filtered through a dry paper filter.

Application of the Test.

The thermometer is fixed so as to be inserted, through the lid of the water-bath described under I, into the water (which is to be steadily maintained at a temparature of 160° Fahr.*) to a depth of 2¾ inches. Fifty grains of nitro-glycerine to be tested are weighed into a test-tube in such a way as not to soil the sides of the tube. A test-paper is fixed on the hook of the glass rod so that when inserted into the tube it will be in a vertical position. A sufficient amount of a mixture of half distilled water and half glycerine to moisten the upper half of the paper is now applied to the upper edge of the test-paper by means of a camel's-hair pencil, the cork carrying the rod and paper is fixed into the test-tube and the position of the paper adjusted, so that its lower edge is about half-way down the tube ; the latter is then inserted, through one of the perforations of the cover, to such a depth that the lower margin of the moistened part of the paper is about five-eighths of an inch above the surface of the cover. The test is complete when the faint brown line, which after a time makes its appearance at the line of boundary between the dry and moist part of the paper, equals in tint the brown line of the standard tint paper.

The nitro-glycerine under examination will not be considered to have satisfied the test unless the time necessary to produce the standard tint, as above described, is at *least* 15 minutes.

* For explosives supplied for His Majesty's Military and Naval Services the temperature is fixed by the War Office at 180°.

B.—Blasting Gelatine, Gelatine Dynamite, and Analogous Preparations.

Fifty (50) grains of blasting gelatine are to be intimately incorporated with one hundred (100) grains of French chalk.* The mixture is to be gradually introduced into a test-tube of the dimensions prescribed above for the dynamite heat test, with the aid of gentle tapping upon the table, between the introduction of successive portions of the mixture into the tube, so that when the tube contains all the mixture it shall be filled to the extent of $1\frac{3}{4}$ inches (one inch and three quarters) of its height. The test-paper is then to be inserted and the heat is to be applied in the manner prescribed above for the dynamite heat test, and the sample tested is to withstand exposure to 160° Fahr. for a period of ten (10) minutes, before producing a discoloration of the test papers corresponding in tint to the standard colour test which is employed for governing the results of the dynamite heat test.

(For Exudation and Liquefaction test for Blasting Gelatine, etc., etc., *see* Appendix.)

*N.B.—Non-glutinized nitro-glycerine preparations from which the nitro-glycerine cannot be expelled by water, are tested without any previous separation of the ingredients, the temperature being as above (*106° *Fahr.) and the time being seven (7) minutes.*

C.—Cordite and Ballistite.

1.—Apparatus required.

The apparatus necessary for the application of the heat test to cordite is identical with that described above for explosives of the nitro-compound class generally † with the addition of mill and a nest of sieves ‡ similar to those used at Waltham Abbey for preparing the cordite for testing (*see* instructions below).

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* This can be readily effected by carefully working the two materials together with a wooden pestle in a wooden mortar.

The French chalk should be of good commercial quality, and, after being carefully washed with distilled water and dried in a water oven, it should be exposed under a bell-jar to moist air until it has taken up about 0·5 per cent of moisture. It should then be bottled for use ; and with ordinary care the limits of 0·5 per cent. can be maintained in keeping.

† In the Waltham Abbey apparatus the cover (Fig. II) has all the holes around the circumference instead of having one in the centre and three around the circumference.

‡ A nest of two sieves with the holes drilled in sheet copper. The holes in the top sieve have a diameter = 14 B.W.G. ; those in the second = 21 B.W.G.

If too hard for the mill, it may be softened by exposure to the vapour of acetone, or reduced to the necessary degree of sub-division by means of a sharp, moderately course rasp. Should it have become too soft in the acetone vapour for the mill, it should be cut up into small pieces, which may be brought to any desired degree of hardness by simple exposure to air.

Explosives which consist partly of gelatinized collodion cotton and partly of ungelatinized gun-cotton are best reduced to powder by a rasp, or softened by exposure to mixed ether and alcohol vapour at a temparature of 90° to 100° Fahr.

2 —Preparation of the sample to be tested.

Pieces half an inch long are cut from one end of every stick selected for the test, in the case of the thicker cordites, each piece so cut is further sub-divided into about four portions. These cut pieces are then passed once through the mill, the first portion of material which passes through being rejected on account of the possible presence of foreign matter from the mill. The ground material is put on the top sieve of the nest of sieves and sifted. The portion which has passed through the top sieve and been stopped by the second is taken for the test. If the mill is properly set the greater portion of the ground material will be of the proper size.

If the volatile matter in the explosive exceed 0·5 per cent., the sifted material should be dried at a temperature not exceeding 140° Fahr. until the proportion does not exceed 0·5 per cent.

After each sample has been ground, the mill must be taken to pieces and carefully cleaned.

3.—Application of the Test.

The thermometer is fixed so as to be inserted through the lid of the water-bath described under 1, so as to be immersed in the water to a depth of 2¾ inches. The water is maintained at a constant temperature of 180° Fahr. When this temperature is reached 25 grains of the sifted cordite are put into one of the test-tubes and collected at the bottom by gentle tapping. A test-paper is fixed on to the hook of the glass rod, so that when inserted into the tube it will be in a vertical position. A mixture of equal parts of distilled water and pure glycerine (Price's) is now applied to the upper edge of the test-paper, by means of a camel's hair pencil, in sufficient amount to moisten the upper half; the stopper carrying the rod and paper is fixed into the test-tube, and the position of the paper adjusted so that its lower edge is about half-way down the tube; the latter is then inserted, through one of the perforations of the cover, to the same depth as the thermometer. The lower margin of the moistened part of the paper should then be about five-eighths of an inch above the surface of the cover. The test is completed when the faint brown line, which after a time makes its appearance at the margin between the wet and dry portions of the test-papers, equal in depth of tint the brown line drawn on the standard tint paper.

4. The time which elapses between the insertion of the test-tube and the completion of the test must not be less than 15 minutes.

N.B.—In the case of ballistite the treatment is the same, except that when it is in a very finely granulated condition it need not be cut up.

II.—Testing Gun-cotton, Schultz's Gunpowder, E. C. Powder, and other Explosives of the 2nd Division of the Nitro-compound Class.

A.—Compressed Nitro-Cellulose, Tonite, etc., etc.

Sufficient material to serve for two or more tests is removed from the centre of the cartridge by gentle scraping, and, if necessary, further reduced by rubbing through a sieve with a clean, hard brush.

The fine powder thus produced is spread out in a thin layer upon a paper tray 6 inches by 4½ inches, which is than placed outside a water-oven kept, as nearly as possible, at 120° Fahr.

The wire gauze shelves in the oven should be about 3 inches apart. The sample is allowed to remain at rest for 15 minutes in the oven, the door of which is left wide open.

After the lapse of 15 minutes the tray is removed and exposed to the air of the room for two hours, the sample being at some point within that time rubbed upon the with a brush in order to reduce it to a fine and uniform state of division.

Application of the Test.

The cover of the water-bath is fitted with the gas regulator, which is inserted through the centre hole (No. 4). The thermometer is fixed into hole No. 3. The water in the bath is then heated to 17° Fahr., and the regulator set to maintain that temperature. Twenty grains of the sample to be tested are weighed out, placed in the test-tube, and gently pressed down until the specimen occupies a space of not more than $1\frac{1}{16}$ inches in a test-tube of the dimensions specified. A test-paper is affixed to the hook of the glass rod or tube, and moistened by touching the upper edge with a drop of distilled water containing 50 per cent. of Price's glycerine. The quantity of liquid used must be only sufficient to moisten about half of the paper. The cork carrying the rod and test-paper is then fixed into the test-tube, and the latter inserted into a bath to a depth of $2\frac{1}{2}$ inches, measured from the cover, the regulator and thermometer being inserted to the same depth. The test-paper is to be kept near the top of the test-tube, but clear of the cork, until the tube has been immersed for about five minutes. A ring of moisture will about this time be deposited upon the sides of the test-tube a little above the cover of the bath; the glass rod must then be lowered until the lower margin of the moistened part of the paper is on a level with the bottom of the ring of moisture in the tube; the paper is now closely watched. The test is complete when the faint brown line, which makes its appearance at the line of boundary between the dry and moist parts of the paper, equals in tint the brown line of the standard tint paper.

The interval of time between the first insertion of the tube containing the sample of gun-cotton in the water at 170° and the production of the standard tint constitutes the test, and this interval of time must be not less than 10 minutes, or the sample will not be considered to have satisfied the test.

B.—GELATINIZED AND SEMI-GELATINIZED NITRO-CELLULOSE PREPARATIONS.*

Twenty-five grains introduced into the test-tube * of the dimensions prescribed for the dynamite heat-test; then proceed as for blasting gelatine, etc., taking the temperature at 180° Fahr., and the time as 15 minutes.

C.—NITRO-CELLULOSE NOT INCLUDED IN A. OR B., SCHULTZ'S POWDER, E. C. POWDER, ETC., ETC.

Sufficient of the sample, without further mechanical division, is dried in the oven as above, and then exposed for two hours to the air. The test as directed above for compressed nitro-cellulose, etc., is then applied, the minimum duration of test being the same, *viz.*, 10 minutes.

D.—PICRIC ACID.

(1) The material shall contain not more than 0·3 part of mineral or non-combustible matter in 100 parts by weight of the material dried at 160° Fahr.

(2) It should not contain more than a minute trace of lead.

(3) One hundred parts of the dry material shall not contain more than 0·3 part of *total* (free and combined) sulphuric acid, of which not more than 0·1 part shall be *free* sulphuric acid.

(4) Its melting point should be between 248° and 253° Fahr.

E.—AMMONITE, BELLITE, ROBURITE, AND EXPLOSIVES, OF SIMILAR COMPOSITION.

These are required to stand the same heat test as compressed nitro-cellulose.

---

* If in a compressed form, it should be broken up in the same manner as cordite and ballistite.

III.—Testing Chlorate Mixtures.

The material must not be too sensitive* and must show no tendency to increase in sensitiveness on keeping.

The material must contain nothing liable to reduce the chlorate.

Chlorides calculated as potassium chloride must not exceed 0·25 per cent.

The material must contain no free acid, or substancce liable to produce free acid.

Explosive of this class containing nitro-compounds will be subject to the heat-test as if they belonged to Class III.

APPENDIX.

Exudation and Liquefaction Test for Blasting Gelatine, Gelatine Dynamite and analogous preparations.

TEST FOR LIQUEFACTION.

A cylinder of blasting gelatine is to be cut from the cartridge to be tested, the length of the cylinder to be about equal to its diameter and the ends being cut flat.

The cylinder is to be placed on end on a flat surface without any wrapper, and secured by a pin passing vertically through its centre.

In this condition the cylinder is to be exposed for one hundred and forty-four (144) consecutive hours (six days and nights) to a temperature ranging from 85° to 90° Fahr. (inclusive), and during such exposure the cylinder shall not diminish in height by more than one-fourth of its original height, and the upper cut surface shall retain its flatness and the sharpness of its edge.

Note —If the blasting gelatine and the gelatine dynamite to be tested be not made up in a cylindrical form, the above test is to be applied with the necessary modifications.

TEST FOR LIABILITY TO EXUDATION.

There shall be no separation from the general mass of the blasting gelatine or gelatine dynamite of a substance of less consistency than the bulk of the remaining portion of the materials under any conditions of storage, transport or use, when the material is subjected three times in succession to alternate freezing and thawing or when subjected to the liquefaction test hereinbefore described.

---

* They will be considred too sensitive if they can be exploded, however partially, by means of a glancing blow with a broomstick on soft wood (such as deal).

THE INDIAN EXPLOSIVES ACT, 1884.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this volume and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S in Brevier Roman denotes the section.

A

Abetment, of offence punishable under the Act—Punishment, S. 12, **48.**

Accidents, Notice of, S. 8, **47.**

Inquiry into, S. 9, **47**, **48.**

Acetylene, Manufacture, possession and importation of, *N*, **45.**

Declaration of, to be an explosive, *X*, **50.**

in admixture with atmospheric air or oxygen gas declared to be an explosive, and its manufacture prohibited, *Y*, **50.**

Act, Places where Explosives Act, declared to be in force, *A*, **5.**

Date of operation of, *A-1*, **6.**

Indian Arms Act, 1878, Saving of, S. 15, **49.**

Arrest, Power to, without warrant person committing dangerous offences punishable under the Act, S. 13, **48.**

Attempt, to commit offences punishable under the Act—Punishment, S. 12, **48.**

Blasting gelatine, gelatine dynamite, testing, **89.**

C

Carriage, Definition of the term, S. 4, **6.**

Chief Inspector of Explosives, Powers conferred on, *V*, **46**, **47.**

Chlorate-mixture, Definition of, **23.**

Testing, **92.**

Cordite and Ballistite, Testing, **89**, **90.**

Apparatus required, **89.**

Preparation of the sample to be tested, **90.**

Application of the test, **90.**

Crackers, Patakhs or, whether fire works—License whether necessary the sale, *F*, **20.**

D

Dangerous offences, Power to assert without warrant person committing, punishable under the Act, S. 13, **48.**

Definition, of the term "explosive," S. 4, **6.**

——— "manufacture," *Ibid.*

——— "vessel," *Ibid.*

——— "carriage," *Ibid.*

Definition—(Concluded).
of the term "master," *Ibid.*
———— "import," *Ibid.*
of "Gunpowder," **22.**
of "Nitrate mixture," *Ibid.*
of "Nitro-compound," *Ibid.*
of "Chlorate-mixture," **23.**
of fulminate, **23.**
of Ammunition, percussion cap, detonator, safety fuze, safety cartridge, **23.**
Extension of, of "explosive" to other explosive substances, S. 17, **49—51.**
Distress, Owner or master of vessel is adjudged under the Act to pay fine—Distress of vessel, S. 11, **48.**
Dynamite, Testing, **88.**
Apparatus required, *Ibid.*
Modes of operation, *Ibid.*
Application of test, *Ibid.*

E

E. C. Powder, Testing, **90—92.**
Explosive, Definition of the term, S. 4, **6.**
Power to make rules as to licensing of the manufacture, possession, use, sale, transport and importation of—, S. 5, **7—44.**
Rules under the Explosives Act, for the manufacture, possession and sale of—, **8—19.**
Rules to regulate manufacture possession, and sale of— by Local Government, *E*, **20.**
License for manufactures of explosives, *F-1*, **21.**
Rules under Ss. 5 and 7—Possession of—s, *F-2*, **21.**
Rules to regulate in transport and importation of—, **21—29.**
Rules to regulate transport and importation of explosives, **21—43.**
List of authorised explosives, **29—31.**
Rules for testing—, *M*, **44.**
Packing of explosives for conveyance, **25—29.**
Mode of conveyance of explosives, **30—33.**
Conveyance by public railways, **33—36.**
Power for Governor-General in Council to prohibit the manufacture, possession or importation of specially dangerous explosives, S. 6, **44—45.**
Power to make rules conferring powers of inspection search, detention and removal of explosives, S. 7, **45, 46.**
Notice of accidents, S. 8, **47.**
Inquiry into accidents, S. 9, **47, 48.**
Forfeiture of, S. 10, **48.**
Saving for manufacture, possession, use, sale, transport or importation of by Government, S. 14, **49.**
Extension of defenition of, to other explosive substances, S. 17, **49—51.**

Explosive—(Concluded).

Declaration of acetylene to be an, *X*, **50**.

Acetylene in admixture with atmospheric air or oxygen gas declared to be an, and its manufacture prohibited, *Y*, **50**.

Rules for testing explosives, **86—92**.

Explosive substances, Extension of definition of explosive to other, S. 17, **49—51**.

F

Fire works, Patakhas crackers whether, *F*, **20**.

sub-division of, **25**.

Forfeiture, of explosives, S. 10, **48**.

Forms, For, see Appendix I, **53—78**.

Fulminates, Definition and sub-division of, **23**.

G

Government, Saving for manufacture, possession, use, sale, transport or importation by, S. 14, **49**.

Governor-General in Council, Power to make rules as to licensing of the manufacture, possession, use, and sale of explosives, S. 5, **7—44**.

Power of, to prohibit the manufacture, possession or importation of specially dangerous explosive, S. 6, **44**, **45**.

Power to make rules conferring powers of inspection, search, detention, and removal, S. 7, **45**, **46**.

Gun-cotton, Testing, **90—92**.

Gunpowder, Definition of, **22**.

I

Import, Definition of the term, S. 4, **6**.

Power to make rules as to licensing of the—, of explosives, S. 5, **7—44**.

Importation, License when required for, of explosives, 3, **7**.

Ports at which, of explosives is lawful, **38**.

Grant of licenses for, in certain cases, **38**.

Grant of licenses for, by sea in cases not provided for by rule 18, **38**.

Grant of license for, by land and fees for such licenses, **38**.

Testing of, by sea in certain cases, **39**.

————, by land in certain cases, **39**.

Re—from one prescribed port into another, **39**.

Inquiry, into accidents, S. 9, **47**, **48**.

L

License, Power to make rules as to licensing of the manufacture possession, use, sale, transport and import of explosives, S. 5, **7—44**.

when required for manufacture, *F*, **9**.

————————possession, *G*, **9**, **10**.

Saving of notification under, S. 6 of the Act, *H*, **10**.

when required for sale, *I*, **10**.

Grants— of, for manufacture, possession and sale in certain cases, *J*, **11**.

License—(Concluded).

Grants of—for manufacture in certain cases, not provided for by Rule 14, *J-1*, **12.**

Grants of—for possession in certain cases, not provided for, Rule 14, *J-2*, **12.**

Grant of—for possession and sale from a magazine in certain other cases, *K*, **12, 13.**

Grant of—for possession in a floating magazine, *L*, **13.**

————--for possession of fulminates, *M*, *N*, **13, 14.**

Duration of—, *O*, **14.**

Renewal of licenses granted under Rule 15, *P*, **14.**

Renewal of, granted under Rule 17, *Q*, **14.**

Renewal of other, *R*, **14.**

Grant of duplicates of licenses, *S*, **14.**

Disposal of stock and grant of temporary, on expiration or forfeiture, *T*, **15.**

Amount of fees for *T-1*, **15, 16.**

Exemption from payment of fees for, *U*, **16.**

Stamps for payment of fees for, *V*, **16.**

Regulation to be observed by certain persons who are exempted from taking out a, for manufacture, *W*, **16, 17.**

Power to extend, effect of, *X*, **17.**

Production of, or authenticated copy thereof, *X*, **19.**

"Patakhas" or crackers whether fireworks—License whether necessary for sale, *F*, **20.**

Whether necessary for sale of "patakhas" or crackers, *F*, **20.**

for manufacture of explosives, *F-1*, **21.**

when required for importation, of explosives, **37.**

Duration of, granted under Rules 20, 21, **40.**

Fees for, granted under Rule 20, **40.**

form of, under Rules 18, 20, 21, **40.**

Forfeiture of, **41.**

Grant of duplicate, **42.**

Importation without, **42.**

Local Government, Power to make rules as to licensing of the manufacture, possession, use, sale, transport and importation of explosives, S. 5, **7,—44.**

Power to make rules conferring powers of inspection, search, detention, and removal, S. 7, **45, 46.**

M

Manufacture, Definition of the term, S. 4, **6.**

Power to make rules as to licensing of the—, of explosives, S. 5, **7—44.**

Saving for, possession, use, sale, transport or importation by Government, S. 14, **49.**

Manufacture, possession, Power for Governor-General in Council to prohibit the,——or importation of specially dangerous explosive, S. 6, **44, 45.**

Manufacture, possession and importation of acetylene, *N*, **45.**

Manufacture, possession and sale, Saving of notification under S. 6, *infra*, *H*, **10**.
Grants of licenses for—in certain cases, *J*, **11**.
Grants of licenses for manufacture in cases not provided for by Rule, 14, *J-1*, **12**.
Rules under the Act for, of explosives, **8—19**.
General exemptions, *D*, **8**.
Licenses when required for manufacture, *F*, **8**, **9**.
Licenses when required for possession, *G*, **9**, **10**.
Licenses when required for sale, *I*, **10**.
Grant of licenses for possession in certain cases not provided by Rule 14, *J-2*, **12**.
Grant of licenses for possession and sale from a magazine in certain other cases, *K*, **12**, **13**.
Grants of license for possession in floating magazine, *L*, **13**.
Grants of license for possession of fulminates, *M*, **13**.
sale in cases not provided for by Rules 14 and 17, *N*, **13**, **14**.
Duration of licenses, *O*, **14**.
Renewal of licenses granted under Rule 15, **14**.
Renewal of licenses granted under Rule 17, *Q*, **14**.
Renewal of other licenses, *R*, **14**.
Grant of duplicate licenses, *S*, **14**.
Disposal of stock and grant in temporary license on expiration of forfeiture of licenses, *T*, **14**, **15**.
Amount of fees for license, *T-1*, **15**, **16**.
Exemption from payment of fees, *U*, **16**.
Stamps for payment of fees, *V*, **16**.
Regulation to be observed by certain persons who are exempted from taking out a license for, *W*, **16**.
Power to extend effect of a license, *X*, **17**.
Powers of inspection, search, seizure etc., *Y*, **17**, **18**.
Production of license or authenticated copy thereof, *Y*, **1**.
Control over officers, *Z*, **19**.
Fines, *A*, **19**.
Forfeiture of license, *B*, *C*, **19**.
Exemption from penalties of person carry on business of deceased or disabled licensee, *D*, **19**.
Rules to regulate for, of explosives made by Local Government, *E*, **20**.
Master, Definition of the term, S. 4, **6**.

N

Nitrate-mixture, Definition of, **22**.
Nitro-compound, Definition of, **22**.
Heat test as applied to explosives of the —— class, **86—92**.
Apparatus required, **86**, **87**.
Materials required, **87**.
Notice, of accidents, S. 8, **47**.
'Patakhas,' or crackers whether fireworks—License whether necessary for sale, *F*, **20**.

P

Penalties, Fines, *A*, **19**.

Forfeiture of licenses, *B*, *C*, **19**.

Exemption of persons carrying on business by deceased or disabled licensee, *D*, **19**.

Picric acid, Rules as to possession, conveyance, and sale of, *Z*, **50**, **51**.

Testing, **91**, **92**.

Possession, Power to make rules as to licensing of the——, of explosives, S. 5, **7—44**.

See manufacture, possession and sale, **8—19**.

License when required for, of explosives, *G*, **9**, **10**.

Procedure, for making, publication and confirmation of rules, S. 18, **52**.

in publication of draft-rules, *A*, **52**.

R

Rules, For what, under S. 5, may provide, S. 5, **7—42**.

Power to make, as to licensing of the manufacture, possession, use, sale, transport and importation of explosives, S. 5, **7—44**.

Under the Explosives Act, for the manufacture, possession and sale of explosives, **8—19**.

to regulate manufacture, possession and sale of explosive made under S. 5 by Local Governments, *E*, **20**.

to regulate the transport and importation of explosives, **21—29**.

Power to make, conferring powers of inspection, search, detention and removal, S. 7, **45**, **46**.

as to possession, conveyance, and sale of Picric acid, *Z*, **50**, **51**.

Procedure for making, publication and confirmation of, S. 18, **52**.

S

Sale, Power to make rules as to licensing of the——, of explosives, S. 5, **7—44**.

See manufacture possession and sale, **8—19**.

License when required for, of explosives, *I*, **10**.

Saving, for manufacture, possession, use, sale, transport or importation by Government, S. 14, **49**.

of Indian Arms Act, 1878, S. 15, **49**.

as to liability under other law, S. 16, **49**.

Schultz's gunpowder, Testing, **90—92**.

Stamps, for payment of fees, *V*, **16**.

T

Table, For, showing distances which should ordinarily be kept clear round magazines, **79—85**.

Test, Rule for testing explosives, *M*, **44**.

Rules of testing explosives, **86—92**.

Heat, as applied to explosives of the Nitro compound class, **86—92**.

Testing dynamite, blasting gelatine, and other explosives of the First Division of the Nitro-compound class, **88—90**.

Testing gun-cotton, Schultz's gun-powder, E.C. powder and other explosives of the second division of the Nitro-compound class, **90—92**.

Transport, Power to make rules as to licensing of the——, of explosives, S. 5, **7—44.**
Transport and importation, Rules to regulate, of explosives, **21—43.**

U

Use, Power to make rules as to licensing of the——, of explosives, S. 5, **7—44.**

V

Vessel, Definition of the term, S. 4, **6.**
Owner or master of vessel is adjudged under the Act to pay fine—Distress of, S. 11, **48.**

W

Warrant, Power to assert without, person committing dangerous offences punishable under the Act, S. 13, **48.**

THE LAWYER'S COMPANION SERIES.

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EXPLOSIVE SUBSTANCES ACT, 1908.

(ACT VI OF 1908.)

(WITH THE CASE-LAW THEREON)

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EXPLOSIVE SUBSTANCE ACT, 1908.

TABLE OF CASES NOTED IN THE VOLUME.

				PAGE.
7 M L T 314	...	Chukkapalli Ramayya, *In Re*	...	4,5
20 M L J 657	...	———————————	...	4,5
6 Ind Cas 51	...	———————————	...	4,5
11 Cr L J 322	...	———————————	...	4,5

THE EXPLOSIVE SUBSTANCES ACT, 1908.

ACT VI OF 1908[1].

[*8th June 1908.*]

An Act further to amend the law relating to explosive substances.

WHEREAS it is necessary further to amend the law relating to explosive substances; It is hereby enacted as follows :—

1.—"Act VI of 1908."

(1) Statement of objects and reasons.

For ———, see Gazette of India, 1908, Pt. IV, p. 170. **A**

(2) Proceedings in Council.

For ——— see Gazette of India, 1908, Pt. VI, p. 128. **B**

Short title, extent and application.

1. (1) This Act may be called the Explosive Substances Act, 1908.

(2) It extends to the whole of British India and applies also to—

(*a*) all native Indian subjects of His Majesty in any place without and beyond British India ;

(*b*) all other British subjects within the territories of any native prince or chief in India.

Definition of "explosive substance."

2. In this Act the expression "explosive substance" shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine or implement.

Punishment for causing explosion likely to endanger life or property.

3. Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment for a term which may extend to ten years, to which fine may be added.

(Notes).

General.

Gist of section—Proof.

The gist of this section is the causing an explosion unlawfully and maliciously, which must be proved in the ordinary way. *Per Abdur Rahim, J.*, in 7 M.L.T. 314=20 M.L J. 657=6 Ind. Cas. 51=11 Cr. L.J. 322=1 M.W.N. 77. **C**

Essence of offence under section.

The essence of the offence under S. 3, Act VI of 1908, is the unlawfully and maliciously causing, by any explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property. *Per White, C.J.* (*Ibid.*) **D**

Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property.

4. Any person who unlawfully and maliciously—

(*a*) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in British India of a nature likely to endanger life or to cause serious injury to property; or

(*b*) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in British India, or to enable any other person by means thereof to endanger life or cause serious injury to property in British India;

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused or not, be punished with transportation for a term which may extend to twenty years, to which fine may be added, or with imprisonment for a term which may extend to seven years, to which fine may be added.

Punishment for making or possessing explosives under suspicious circumstances.

5. Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punishable with transportation for a term which may extend to fourteen years, to which fine may be added, or with imprisonment for a term which may extend to five years, to which fine may be added.

(Notes).

General.

Essentials of S. 5—Burial of explosive substance on path -Death of a passer-by—Penal Code, S. 302.

The accused got made for him an iron arch and also gave a false name when he got the arch made. It was also proved that a piece of paper found at the house of the accused was taken from a copy of a certain book, and the scraps found at the scene of explosion were taken from a copy of the some book. *Held*, that the facts proved were not sufficient to sustain the conviction of the accused for the offence of murder and for an offence under S. 3, Explosive Substances Act, 1908. **E**

Held, also, that the accused was properly convicted under S. 5, Explosive Substances Act, 1908. 7 M.L.T. 314=20 M.L.J. 657 (658)=6 Ind. Cas. 51=11 Cr. L.J. 322=1 M.W.N. 77. **F**

On a reference under S. 378 of the Cr. P.C., where the Division Bench were agreed upon a particular conviction, the Judge bearing the reference was not entitled to go behind it, and hence the propriety of the conviction under this section in the case could not be questioned. (*Ibid.*) **G**

Per Benson, J.—The prisoner was guilty on the above facts of offences under S. 302, I P.C., and under Ss. 3 and 5 of Act VI of 1908. (*Ibid.*) **H**

The facts proved in this case lead one clearly to the belief that the first accused either himself made the bomb and buried it in the path where it exploded, or caused it to be made and buried there by some other person, and in either case he is equally guilty on the principle *qui faci per altum facit per se*. If a person buries a bomb in a frequented path where it is almost certain to be trodded on, and to explode and cause the death of any one treading on it, and if it does, in fact, explode and cause death, that person is guilty of murder, unless he can explain his action in such a way as to negative the inference as to his intention which the nature and circumstances of the act suggest. (*Ibid.*) **I**

Per Abdur Rahim, J.—Under this section it is not necessary to come to any more definite finding than that accused had possession of the explosive substance under suspicious circumstances. (*Ibid.*) **J**

General—(*Concluded*).

But mere suspicion would not suffice for a conviction under S. 3 of the Explosive Substances Act, the gist of that section being the causing of an explosion unlawfully and maliciously which must be proved in the ordinary way. (*Ibid.*) **K**

Punishment of abettors.

6. Any person who by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any offence under this Act shall be punished with the punishment provided for the offence.

Restriction on trial of offences.

7. No Court shall proceed to the trial of any person for an offence against this Act except with the consent of the Local Government of the Governor General in Council.

EXPLOSIVE SUBSTANCE ACT, 1908.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this volume and the alphabets in intalics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S in Brevier Roman denotes the section.

A

Abettors, Punishment of, S. 6, **6**.

Act, Short title, extent and application of Explosive Substances Act, S. 1, **3**.

D

Death, Burial of Explosive substance - Death of passer-by, *E—K*, **5**, **6**.

Definition, of explosive substance, S. 2, **3**.

E

Explosion, Punishment for causing, likely to endanger life or property, S. 3, **4**.

Gist of S. 3—Proof, *C*, **4**.

Essence of offence under S. 3, *D*, **4**.

Punishment for attempt to cause, or for making, keeping explosive with intent to endanger life or property, S. 4, **4**.

Explosive, Punishment for attempt to cause explosion, or for making or keeping, with intent to endanger life or property, S. 4, **4**.

Punishment for making or possessing explosives under suspicious circumstances, S. 5, **5**, **6**. Essentials of S. 5, *J*, **5**.

Explosive substance, Definition of, S. 2, **3**.

Burial of—Death of passer-by—S. 302, Penal Code, *E—K*, **5**, **6**.

O

Offences, Restriction on trial of, against this Act, S. 7, **6**.

P

Penal Code, S. 302—Burial of explosive substances on path—Death of passer-by—Essentials of S. 5 of the Act, *E—K*, **5**, **6**.

Punishment, for causing explosion likely to endanger life or property, S. 3, **4**.

Gist of S. 3—proof, *C*, **4**.

Essence of offence under, S. 3, *D*, **4**.

for attempt to cause explosion or for making or keeping explosive with intent to endanger life or property, S. 4, **4**.

for making or possessing explosives under suspicious circumstances, S. 5, **5**, **6**.

Essentials of S. 5, *J*, **5**.

of abettors, S. 6, **6**.

R

Restriction, on trial of offences against this Act, S. 7, **6**.

T

Trial, Restriction on, of offences against this Act, S. 7, **6**.

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THE INDIAN PETROLEUM ACT, 1899.

TABLE OF CASES NOTED IN THIS VOLUME.

		PAGE
	Ratanlal's Unreported Criminal Cases.	
Rat Unrep Cr C 643	Queen Empress v Chunilal	13
	Calcutta Weekly Notes.	
7 C W N 658	Padan Saha v. The Emperor	19

THE INDIAN PETROLEUM ACT, 1899.

CONTENTS.

Preliminary.

SECTIONS.

1. Short title, commencement and extent.
2. Definitions.
3. Matters supplemental to definitions.
4. Power to vary tests and prescribe new tests.

Dangerous petroleum.

5. Dangerous petroleum in quantities exceeding forty gallons.
6. Dangerous petroleum in quantities not exceeding forty gallons.
7. Vessels containing dangerous petroleum to be labelled.

Petroleum generally.

8. Power for Governor General in Council to make rules.
9. Power for Local Government to make rules.
10. Procedure after petroleum has been discharged or landed.
11. Possession and transport of petroleum.
12. Power to inspect and require dealer to sell samples.
13. Notice to be given when officer proposes to test samples.
14. Certificate as to result of testing.

Penalties.

15. Penalty for illegal importation, possession or transport of petroleum, or for refusal to comply with section 12.
16. Penalty for contravention of section 7.
17. Confiscation of petroleum.
18. Jurisdiction.

Test-apparatus.

19. Model test-apparatus.
20. Verification of test-apparatus.

Miscellaneous.

21. Power to exempt petroleum from operation of Act.
22. Power to apply Act to other substances.
23. Power to limit operation of enactments relating to possession or transport of petroleum in Municipalities.
24. Previous publication, etc., of rules.
25. Repeal.

THE FIRST SCHEDULE.—TESTING.

THL SECOND SCHEDULE.—ENACTMENTS REPEALED.

APPENDICES.—LOCAL RULES AND ORDERS.

THE INDIAN PETROLEUM ACT, 1899.

ACT VIII OF 1899.[1]

[*17th February 1899.*]

An Act to consolidate and amend the law relating to the importation, possession and transport of petroleum and other substances.

WHEREAS it is expedient to consolidate and amend the law relating to the importation, possession and transport of petroleum and other substances; It is hereby enacted as follows :—

(Notes).

I.—"Act VIII of 1899."

(1) **Statement of objects and reasons.**

For——, see Gazette of India, 1899, Pt V, p. 13. **A 1**

(2) **Report of the select committee.**

For——, see Gazette of India, 1899, Pt. V, p. 25. **A 2**

(3) **Proceedings in Council.**

For——, see Gazette of India, 1899, Pt. VI, pp. 12 and 24. **A 3**

Preliminary.

Short title, commencement and extent.[1]

1. (1) This Act may be called the Indian Petroleum Act, 1899; and

(2) It shall come into force at once.

(3) Sections 1 to 3, section 25, and all the provisions of this Act in so far as they relate to dangerous petroleum and the importation of petroleum, extend to the whole of British India. The rest of this Act extends only to such local areas as the Local Government may, by notification in the local official Gazette, direct.

(Notes).

1.—"Extent."

(1) **Act has been declared in force in the Santhal Parganas.**

The—by the Santhal Parganas Settlement Regulation, 1872 (III of 1872), as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899), Bengal Code. **B**

I.—" Extent "—(Concluded).

(2) Ss. 1 to 3 and 25 and all the provisions of the Act—Extension.

Ss. 1 to 3 and 25 and all the provisions of the Act, so far as they relate to dangerous petroleum and the importation of petroleum, have been extended to British Baluchistan by notification under S. 5 of the Scheduled Districts Act, 1874 (XIV of 1874). See Gazette of India, 1899, Pt. II, p. 1159. **C**

(3) Extension of rest of Act.

The rest of the Act as extended to—

(1) Ajmere-Merwara—, see Gazette of India, 1901, Pt. II, p. 1178.
(2) Assam—, see Assam, R.M. Supplement;
(3) Bengal, including places in districts transferred to Eastern Bengal and Assam, see Beng. Sat. R. and O., Vol. II;
(4) Coorg—, see Coorg District Gazette, 1899, Pt. I, p. 125;
(5) the Bombay Presidency—, see Bombay Government Gazette, 1901, Pt. I, p. 902;
(6) Burma (except the Shan States)—, see Burma Gazette, 1901, Pt. I, p. 87;
(7) certain places in Madras Presidency—, see Fort St. George Gazette, 1900, Pt. I, p. 616;
(8) the whole of the Madras Presidency—, see Mad. R. and O., Vol. II, Pt. II;
(9) the North-West Frontier Province—, see Gazette of India, 1903, Pt. II, p. 969;
(10) the Punjab—see Punjab Government Gazette, 1902, Pt. I, p. 21;
(11) the United Provinces—, see North-Western Provinces and Oudh Government Gazette, 1901, Pt. I, p. 267.
(12) Central Provinces, see Central Provinces Gazette, 1906, Pt. III, p. 517. **D**

(4) Ss. 1 (3), 11 and 15—Repealed Act, XII of 1886, Ss. 2 (2), 10 and 15—Notification in Gazette extending repealed Act to Cuttack—New Act not expressly preserving the same—General Clauses Act, Ss. 8, 24.

(*a*) A notification in the Calcutta Gazette extending the operation of the Act XII of 1886 to Cuttack was held to have been preserved under Act VII of 1899 by the operation of Ss. 8 and 24 of the General Clauses Act, although the Act of 1886 itself was repealed and there was no provisions in the present Act expressly preserving the notifications issued under the provisions of the repealed Act. 7 C.W.N. 658 (660). **E**

(*b*) The notification was an order within the meaning of S. 24 of the General Clauses Act, and a second notification in Gazette under the new Act, on the repeal of the old Act, was unnecessary. (*Ibid.*) **F**

(*c*) The Act of 1886 contained in S. 2, Sub-Sec. (2), a proviso that all notifications issued, rules made, licenses granted, powers conferred and certificates given under the Act should, so far as might be, be deemed to have been issued, made granted, conferred and given under this Act. (*Ibid.*) **G**

(*d*) The Act referred to in that sub-section is the earlier Petroleum Act of 1886 and the effect of that proviso was to preserve all notifications, rules and powers which had issued under the earlier Act. (*Ibid.*) **H**

(*e*) Now, while the Petroleum Act of 1899 re-enacts the provision as to the local extent which is to be found in the Petroleum Act of 1886, there is in it no provision corresponding to S. 2, Sub-S. (2) to which it has been just referred. (*Ibid.*)

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "petroleum" includes also—

(*i*) the liquids commonly known by the names of rock oil, Rangoon oil, Burma oil, paraffin oil, mineral oil, kerosine, petroline, gasoline, benzoline, benzine and benzol;

(*ii*) any inflammable liquid which is made from petroleum, coal, schist, shale, peat or any other bituminous substance, or from any product of petroleum; and

(*iii*) any liquid, or viscous mixture having in its composition any of the liquids aforesaid;

but it does not include any oil ordinarily used for lubricating purposes and having its flashing point at or above two hundred degrees of Fahrenheit's thermometer;

(*b*) [1] "dangerous petroleum" means petroleum having its flashing point below seventy-six degrees of Fahrenheit's thermometer:

Provided that, when all or any of the petroleum on board a ship, or in the possession of a dealer, is declared by the master of the ship or the consignee of the cargo, or by the dealer, as the case may be, to be of one uniform quality, the petroleum shall not be deemed to be dangerous, if the samples selected from the petroleum have their flashing points, on an average, at or above seventy-three degrees of Fahrenheit's thermometer, and if no one of these samples has its flashing point below seventy degrees of that thermometer:

(*c*) to "import" means to bring into British India by sea or land:

(*d*) to "transport" means to remove within British India from one place to another:

(*e*) "prescribed" means prescribed by rules made under this Act: and

(*f*) "ship" includes anything made for the conveyance by water of human beings or property.

(Notes).

1. –Dangerous petroleum.''

(1) Rules as to carriage of petroleum in native passenger ships.

No. 5100-S.R., dated the 20th August 1903.—In exercise of the powers conferred by section 53 of the Native Passenger Ships Act, 1887 (X of 1887), the Governor General in Council is pleased to make the following rules regarding the carriage of petroleum in ships to which the said Act applies :

(*a*) No petroleum which is dangerous within the meaning of the Indian Petroleum Act, 1899 (VIII of 1899), shall be shipped on board any ship proceeding or departing from British India, and no other petroleum shall be carried on board such a ship otherwise than in accordance with the following conditions, namely :—

(i) The master owner or agent shall give notice to the Chief Customs officer or such other officer as the Chief Customs officer may nominate in this behalf before permitting any petroleum to be shipped.

(ii) Each consignment of petroleum shipped shall be covered by a declaration made and signed by the shipper in Form A (thereto annexed), if the petroleun has imported into British India, and otherwise in Form B.

(iii) Petroleum shall be shipped either in tins enclosed in outer wooden cases, or in hermetically sealed iron or steel drums.

(iv) The nature of every consignment of petroleum shipped shall be marked on the outside of the package containing it.

(v) Petroleum shall be stored separate from all other cargo and as far as possible away from lights or fires, and none shall be stored in any hold adjoining an engine room or boiler or in any compartment situated above the passenger spaces.

N.B.—Substituted by Notification No. 7641-S.R., dated the 15th December 1904 ; see Gazette of India, 1904, Pt. I, p. 917.

(vi) There shall be a water-tight bulkhead between the engine room and any hold in which petroleum is stored, and the sluice-valves of such bulkhead shall be shut down and padlocked.

(vii) Save where electric light is used no petroleum shall be shopped or discharged except between sunrise and sunset ; no lights other than electric lights shall be lit in a hold in which petroleum is stored, and no smoking shall be permitted in or near any such hold.

(viii) No person shall otherwise than along with or with the authority of an officer of the ship be permitted to visit a hold in which petroleum is stored.

(ix) No more passengers shall be carried than can with safety be accommodated in the ship's boats in case of accident, unless the vessel is a coasting one proceeding on a short voyage and there are provided life-belts sufficient for such passengers as cannot be accommodated in the boats.

(x) At any port in which a ship carrying petroleum is for the time being, the Chief Customs officer or such other officer as the Chief Customs officer may nominate in this behalf may take and test any consignment of such petroleum or any single case or drum thereof.

1.—"Dangerous petroleum"—(Concluded).

(xi) If any petroleum tested under clause (*j*) is found to be dangerous petroleum defined as aforesaid, the whole consignment of which the petroleum tested formed a part shall be liable to confiscation.

Substituted by Notification No. 5579-S.R., dated the 10th September 1903; see Gazette of India, 1903, Pt. I, p. 840.

(*b*) The officer authorised to grant a certificate in respect of a ship under Ss. 7 and 12 of the Native Passenger Ships Act, 1887 (X of 1887), shall, if there is petroleum on board, not grant the same without the consent of the Chief Custom officer or such other officer as the Chief Customs officer may nominate in this behalf.

(*c*) Whoever commits a breach of any of these rules shall be punishable with fine which may extend to two hundred rupees, and when the breach is a continuing one, with a further fine which may extend to twenty rupees for every day after the first during which the breach continues. J

FORM A.

We hereby to declare that the cases and drumbs marked as follows :—

presented for shipment on the Steam-ship contain imported petroleum and that the petroleum is contained in the original packages in which it was imported into this country.

Place

Date Shippers.

FORM B.

We hereby declare that the whole of the petroleum contained in the case of drums marked and presented for shipment on Steam-ship is petroleum which is covered by flash point certificate No. , dated , from the officer appointed by the Local Government for testing petroleum, a true copy of which, certified to by us, is herewith attached.

Place

Date Shippers.

(See Gazette of India, 1903, Pt. I, p. 803.)

N. B.—The same notification prohibits the carriage of dangerous petroleum in such ships.

(2) Rules as to the control of vessels entering Calcutta with petroleum.

For—in bulk under the Indian Ports Act, 1889 (New Indian Ports Act, 1908), see Calcutta Gazette, 1903, Pt. I, p. 1165. K

Matters supplemental to definitions.

3. (1) The "flashing point" of petroleum means the lowest temperature at which the petroleum yields a vapour which will furnish a momentary flash or flame when tested in accordance with the directions in the first schedule with an apparatus which has been stamped and certified as provided by this Act within a period of five years

immediately preceding the date on which the apparatus is used for the testing, and after the corrections (if any) which the certificate declares are to be applied to the results of the testing, have been made.

(2) Notwithstanding anything in the definitions of "import" and "transport," the Local Government, with the previous sanction of the Governor General in Council, may, by notification in the local official Gazette, declare—

(*a*) that petroleum imported [1] into the province from any part of British India, by sea or across intervening territory not being part of British India, shall, for all or any of the purposes of this Act, be deemed to be transported; and

(*b*) that petroleum transported into the province from any place in British India shall, for all or any of those purposes, be deemed to be imported;

and thereupon the provisions of this Act and of the rules made under this Act, with respect to transport and import, respectively, shall apply to petroleum so imported or transported.

(Notes).

1.—"Petroleum imported."

Petroleum imported into various places—Notifications.

Petroleum imported into Chittagong by sea from any port in Burma is to be deemed to be transported within the meaning of this clause—see Notification No. 134, Marine, 27th July 1900; Calcutta Gazette, 1900, Pt. I, p. 828.

For notifications under this clause affecting petroleum imported into—

(1) Bengal, see Ben. Stat. R. and O., Ed., 1903, Pt. I, p. 71; see Calcutta Gazette, 1900, Pt. I, p. 828;

(2) the Bombay Presidency, see Bombay Government Gazette, 1901, Pt. I, p. 102;

(3) Burma, see Burma Gazette, 1903, Pt. I, p. 14;

(4) Madras Presidency, see Fort St. George Gazette, 1900, Pt. I, p. 169. **L-M**

Power to vary tests and prescribe new tests.

4. (1) The Governor General in Council may, by notification in the Gazette of India, alter or add to[1] the first schedule by laying down new or varied tests and directions for preparing and using them; and, after the issue of any such notification as aforesaid, the reference in section 3, sub-section (1), to the first schedule shall be construed as referring to the said schedule as so altered or added to for the time being.

(2) The Governor General in Council may, in like manner, lay down special tests and issue special instructions in respect of the testing of any substance other than petroleum to which the whole or any portion of this Act may be applied in exercise of the power conferred by section 22, and for which the tests in the first schedule are unsuitable.

(3) The provisions of section 23 of the General Clauses Act, 1897, shall apply to notifications under this section as if they were rules or orders required to be made after previous publication.

(Notes).

1.—"Add to."

Notification making an addition to the first schedule.

For—, see Gazette of India, 1900, Pt. I, p. 403. **N**

Dangerous petroleum.

Dangerous petroleum in quantities, exceeding forty gallons.

5. (1) No quantity of dangerous petroleum exceeding forty gallons shall be imported or transported or kept by any one person or on the same premises, except under, and in accordance with the conditions (if any) of a license from the Local Government*** [1].

(2) Every application for such a license shall be in writing in the prescribed form [2] and shall contain the prescribed particulars.

(Notes).

1.—" Local Government. "

Legislative change.

The words "granted as next hereinafter provided" were repealed by the Repealing and Amending Act, 1901 (XI of 1901). **O**

2.—" Form. "

Form of application for a license to import, transport and possess petroleum.

For—in Burma, see Burma Gazette, 1900, Pt. I, p. 683. **P**

Dangerous petroleum in quantities not exceeding forty gallons.

6. No quantity of dangerous petroleum equal to, or less than, forty gallons shall be kept or transported without a license:

Provided that nothing in this section shall apply in any case where the quantity of the petroleum kept by any one person or on the same premises, or transported, does not exceed three gallons, and the petroleum is placed in separate glass, stoneware or metal vessels, each of which contains not more than a pint and is securely stopped.

7. Dangerous petroleum—

Vessels containing dangerous petroleum to be labelled.

(*a*) which is imported and is kept at any place after seven days from the date of its importation, or

(*b*) which is transported, or

(*c*) which is sold or exposed for sale,

shall be contained in vessels having attached thereto labels in conspicuous characters stating the description of the petroleum, with the addition of the words " highly inflammable " and with the addition,—

(*d*) in the case of a vessel kept, of the name and address of the consignee or owner ;

(*e*) in the case of a vessel transported, of the name and address of the sender ; and,

(*f*) in the case of a vessel sold or exposed for sale, of the name and address of the vendor.

Petroleum generally.

Power for Governor General in Council to make rules.

8. (1) The Governor General in Council may makes rules to carry out the purposes and objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules [1] may provide for the granting of licenses to transport petroleum from any part of British India to any other part of British India in cases in which such licenses are by law required.

(Notes).

1.—" Rules. "

Transport of petroleum between Provinces

No. 1795, dated the 12th December 1902.—In exercise of the powers conferred by S. 8 of the Indian Petroleum Act, 1899 (VIII of 1899), the Governor General in Council is pleased to make the following rules to regulate the transport of petroleum from one Province of British India to another, namely :—

(1) Sane as otherwise provided in sub-rule (2) where petroleum is tranported from any Province of British India to any other such Province, the rules relating to the granting of transport licenses and to the transport of petroleum for the time being in force in the Province from which the petroleum is transported, and no others, shall, so far as they can be be made applicable, be deemed to apply to the petroleum, so long as it remains in transport, as though it were being transported within the limits of such last mentioned Province.

1.—"Rules"—(Concluded).

(2) Nothing in sub-rule (1) shall be deemed to limit or otherwise affect the the exercise, for the due enforcement of the rules rendered applicable by the said sub-rule, of any powers of inspecting or detaining petroleum in transport, which may be exciseable by any Magistrate or Police officer under any rules for the time being in force under the Indian Petroleum Act, 1899 (VIII of 1899), in the Province within which the petroleum is being transported.

(See Gazette of India, 1902, Pt. I, p. 889.)

(See Gazette of India, 1905, Pt. I, p. 248.) Q

Petroleum—Importation—Land.

Petroleum imported by land into British India from territory beyond the limits of British India, but not shown to have been imported from any port does not come within the restrictions imposed by Rule 3 of the rules framed for regulating the importation of petroleum by sea into the Presidency of Bombay. Rat. Unrep. Cr. C. 643. R

Power for Local Government to make rules.

9. (1) The Local Government, with the previous sanction of the Governor General in Council, may make rules [1] to regulate the importation of petroleum and the granting of licenses to possess or to transport petroleum within the Province in cases in which such licenses are by law required.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) determine the ports at which alone petroleum may be imported ;

(*b*) provide for ascertaining the quantity and description of any petroleum on board any ship ;

(*c*) determine the places at which, and the conditions on and subject to which, petroleum may be discharged into boats, landed, transhipped or stored ;

(*d*) provide for the selection by an officer appointed by the Local Government in this behalf, and for the delivery to him, either after or before petroleum has been landed, of samples of all petroleum landed or intended to be landed ;

(*e*) provide, in the case of each consignment which is stated to be of one uniform quality, for the number of samples to be selected, and for the averaging of the results of the testing of those samples ;

(*f*) provide, where the results of the testing of the samples raise a doubt as to the uniformity of the quality of the petroleum in any such consignment, for the division of the consignment into lots, and for the selection and testing of samples of each lot, and for the treatment of the lot in accordance with the results of the testing of those samples ;

(*g*) fix fees for the sampling and testing of petroleum ;

(*h*) fix fees for the storage of petroleum unless any local authority is empowered in that behalf ;

(*i*) [2] define with respect to any petroleum produced within the Province, the limits of the places in which such petroleum is to be refined [3] ;

(*j*) provide for the testing [3] at or near those places of petroleum so produced ;

(*k*) prevent the removal from those limits, otherwise than under the provisions of this Act applicable to dangerous petroleum, of petroleum so produced which has not satisfied the prescribed tests ;

(*l*) prescribe the authority by which licenses to possess or to transport petroleum may be granted ;

(*m*) fix the fee to be charged for any such license ;

(*n*) limit the quantity of petroleum to be covered by any such license ;

(*o*) prescribe the conditions which may be inserted in any such license ;

(*p*) limit the time during which any such license is to continue in force ;

(*q*) provide for the renewal of any such license ;

(*r*) provide for the nature and situation of the premises in respect of which licenses to possess petroleum may be granted, the inspection of premises so licensed and the testing of petroleum found thereon ; and

(*s*) prescribe the manner in which the petroleum covered by a license to transport is to be packed, the mode and time of its transit, the route by which it is to be taken, and its stoppage and inspection during transit.

(Notes).

1.—"Rules."

(1) **Rules for the importation, possession and transport of Petroleum in the various provinces.**

For——, see Appendices, *infra*. S

(2) **Rules regulating the import, possession, sale and transport of carbide of calcium.**

For——in :—

(1) Ajmer-Merwara, see Gazette of India, 1906, Pt. II, p. 1404 ;

(2) Bengal, see Calcutta Gazette, 1906, Pt. I, p. 944 ; for amendment, see *ibid.*, 1906, Pt. I, p. 126 ;

(3) Bombay. see Bombay Government Gazette, 1906, Pt. I, p. 751 ; and *ibid.*, 1907, Pt. I, p. 305 ;

(4) Burma, see Burma Gazette, 1906, Pt. I, p. 294;

(5) Central Provinces, see Central Provinces Gazette, 1906, Pt. III, p. 196 ;

(6) Coorg, see Coorg District Gazette, 1906, Pt. I, p. 82, and *ibid.*, 1907, Pt. I, p. 55 ;

(7) Eastern Bengal and Assam, see Eastern Bengal and Assam Gazette, 1906, Pt. II, p. 727 ;

(8) Madras, see Mad. R. & O., Vol. I, Pt. II ; Fort St. George Gazette, 1906, Pt. I, p. 381, *ibid.*, 1907, Pt. I, p. 94.

(9) N.W. Frontier Province, see Gazette of India, 1906, Pt. II, p. 643 ;

(10) Punjab, see Appendix E, *infra*.

(11) United Provinces, see the United Provinces Gazette, 1906, Pt. I, p. 402, *ibid.*, 1907, Pt. I, p. 51. T

(3) **Rules regulating the grant of licenses to possess or transport petroleum.**

For—— in :—

(1) Ajmer-Merwara, see Gazette of India, 1903, Pt. II, p. 108 ;

(2) Assam, see Assam Gazette, 1903, Pt. II, p. 406 ;

(3) Bengal, see Calcutta Gazette, 1903, Pt. I, p. 823 ; as to grant of licenses to owners of motor cars to possess and transport petrol, see *ibid.*, 1905, Pt. I, p. 1624 ;

(4) Bombay, see Bombay Government Gazette, 1906, Pt. I, p. 141 ; see *ibid.*, 1904, Pt. I, p. 1234, as to licenses to owners of motor cars to possess petrol ;

(5) Burma, see Burma Gazette, 1909, Pt. I, p. 55 ; as to grant to owners of motor cars of special licenses to keep and transport petrol for use in such cars, see Burma Gazette, 1904, Pt. I, p. 151 ;

(6) Central Provinces, see Central Provinces Gazette, 1905, Pt. III, p. 245 ;

(7) Coorg, see Coorg District Gazette, 1901, Pt. I, p. 116 ;

1.—"Rules"—(Concluded).

(8) Madras, see Mad. R. & O; Fort. St. George Gazette, 1904, Pt. I, p. 138; as to grant to owners of motor vehicles of licenses to keep and transport petrol for use therein, see Fort St. George Gazette, 1904, Pt. II, p. 1017;

(9) North-West Frontier Province, see Gazette of India, 1904, Pt. II, p. 1393.

(10) Punjab, see Punjab Gazette, 1909, Pt. I, p. 109;

(11) United Provinces, see North-Western Provinces and Oudh Gazette, 1901, Pt. I, p. 678; as to grant of licenses to owners or hirers of motor cars, see United Provinces Gazette, 1909, Pt. I, p. 94. **U**

2.—"Sub-sec. (2) (i)."

Notification issued under this clause.

For——in:—

(1) the Chief Commissioner of Assam, see Assam Gazette, 1903, Pt. II, p. 479;

(2) the Government of Burma, see Burma Gazette, 1908, Pt. I, p. 47. **V**

3.—"Testing."

Rules as to refining and testing petroleum.

For——produced in (1) Assam, see Assam Gazette, 1903, Pt. II, p. 414; and (2) in Burma, see Burma Gazette, 1908, Pt. I, p. 47. **W**

Procedure after petroleum has been discharged or landed.

10. (1) Petroleum discharged into boats or landed in accordance with rules made under section 9, sub-section (2), shall not be removed from the boats or places in or at which it is stored until the samples selected therefrom in accordance with those rules have been tested by an officer [1] appointed by the Local Government in this behalf and the officer has given a certificate that the petroleum is not dangerous petroleum.

(2) If the officer, after testing the samples, refuses to give the certificate in respect of any petroleum, the Local Government may permit the consignee, within a time to be fixed by the Local Government in this behalf,—

(*a*) to rectify the petroleum,

(*b*) to apply for a license to import the petroleum as dangerous petroleum, or

(*c*) to re-export the petroleum.

(3) If the consignee does not, within the time fixed under sub-section (2), avail himself of the permission granted under that sub-section, the petroleum may be disposed of as the Local Government may direct.

(4) Notwithstanding anything in the foregoing provisions of this section, the Local Government, in its discretion, may, where the officer has refused the certificate, direct that the petroleum be re-tested by another officer appointed by it in this behalf, and may, if that officer advises that the petroleum is not dangerous petroleum, authorise its removal from the boats or places in or at which it is stored.

(Note).

1.—"Officer."

Officers appointed.

For—by :—

(1) Bengal Government, see Calcutta Gazette, 1903, Pt. I, p. 937 ;

(2) Assam Government, see Assam Gazette, 1903, Pt. I, p. 474 ;

(3) Burma Government, see Burma Gazette, 1908, Pt. I, p. 48.

(4) Madras Government, see Madras R. & O. X

Possession and transport of petroleum.

11. No quantity of petroleum exceeding five hundred gallons shall be kept by any one person or on the same premises, or shall be transported, except under, and in accordance with the conditions of, a license granted under this Act :

Provided that the Local Government may, by notification in the local official Gazette, exempt from the operation of this section petroleum when transported in such particular manner and under such particular conditions as may be set forth in the notification.

Power to inspect and require dealer to sell samples.

12. Any officer [1] specially authorized in this behalf by the Local Government may require any dealer in petroleum to show him any place and any of the vessels in which any petroleum in his possession is stored or contained, to give him such assistance as he may require for examining the same, and to deliver to him samples of the petroleum on payment of the value of the samples.

(Notes).

1.—"Officer."

Notification under section 12.

(1) See Gazette of India, 1905, Pt. II, p. 246 ;

(2) Bombay, see Bombay Government Gazette, 1907, Pt. I, pp. 34, 614 ;

(3) Burma, see Burma Gazette, 1909, Pt. I, p. 75.

1.—"Officer"—(Concluded).

Officers hereunder mentioned are specially authorised to exercise, within the areas respectively specified below, the powers conferred by S. 12.

Officers.	AREAS.	
	Madras.	Punjab.
The Chief Inspector of Explosives and the Inspectors of Explosives.	In all parts of the Madras Presidency.	In all parts of the province.
All District Magistrates.	Within their respective districts.	Within their respective districts.
All Magistrates subordinate to the District Magistrate.	Within the areas, respectively, subject to their jurisdiction.	Within the areas, respectively, subject to their jurisdiction.
President of the Corporation of Madras.	In the City of Madras.	Within the areas over which respectively, their authority extends.
All Police officers not below the rank of Sub-Inspector.	Within the areas over which, respectively, their authority extends. [See Madras Govt. Order, No. 442, dated July 24, 1909.]	[See Pun. Govt. Order, No. 93, dated 15th Feb. 1909].

Y

Notice to be given when officer proposes to test samples.

13. When any such officer has, in exercise of the powers conferred by section 12, or by purchase, obtained a sample of petroleum in the possession of a dealer, he may give a notice in writing to the dealer informing him that he is about to test the sample, or cause it to be tested, at a time and place to be fixed in the notice, and that the dealer or his agent may be present at the testing.

Certificate as to result of testing.

14. On any such testing, if it appears to the officer or other person so testing that the petroleum from which the sample has been taken, is or is not dangerous petroleum, the officer or other person may certify the fact; and the certificate so given shall be receivable as evidence in any proceedings which may be taken under this Act against the dealer in whose possession the petroleum was found, and shall, until the contrary is proved, be proof of the fact stated therein, and a certified copy of the certificate shall be given, free of charge, to the dealer at his request.

Penalties.

[1]Penalty for illegal importation, possession or transport of petroleum or for refusal to comply with section 12.

15. Whoever,—

(*a*) in contravention of this Act or of any of the rules thereunder, imports, possesses or transports any petroleum ; or

(*b*) otherwise contravenes any such rules as aforesaid ; or

(*c*) breaks any condition contained in a license granted under this Act ; or,

(*d*) being a dealer in petroleum, refuses or neglects to show to any officer authorized under section 12 any place or any of the vessels in which petroleum in his possession is stored or contained, or to give him such assistance as he may require for examining the same, or to give him samples of the petroluem on payment of the value of the samples ;

shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

(Notes).

1.—"Penalty."

Indian Petroleum Act (VII of 1889), Ss. 11, 15—Also Repealed Act (XII of 1886), Ss 10, 15—Kerosine oil, possession of, exceeding statutory quantity—Notification in Gazette extending Repealed Act to Cuttack—New Act not expressly preserving same.

The accused had been convicted under Ss. 11 and 15 of the Indian Petroleum Act for being in possession of 148 tins of Kerosine oil at Cuttack, a place, to which similar provisions of the Petroleum Act of 1886 had been extended by a notification in the Calcutta Gazette dated 7th April 1891:

Held, that the notification of 1891 made the present Act applicable to Cuttack and the conviction was right. 7 C.W.N. 658. **Z**

Penalty for contravention of section 7.

16. Whoever keeps, sells or exposes for sale dangerous petroleum in vessels not labelled as prescribed by section 7 shall be punishable with fine which may extend to five hundred rupees.

Confiscation of petroleum.

17. In any case in which an offence under section 15, clause (*a*), clause (*b*), or clause (*c*), or section 16 has been committed, the convicting Magistrate may direct that—

(*a*) the petroleum in respect of which the offence has been committed, or

(*b*) where the offender is importing or transporting, or is in possession of, any petroleum exceeding the quantity (if any) which he is permitted to import, transport or possess, as the case may be, the whole of the petroleum which he is importing or transporting or is in possession of,

shall, together with the tins or other vessels in which it is contained, be confiscated.

Jurisdiction.

18. The criminal jurisdiction under this Act shall, in the Presidency-towns, be exercised by a Presidency Magistrate, and, elsewhere, by a Magistrate of the first class or (where specially empowered by the Local Government to try cases under this Act) a Magistrate of the second class.

Test-apparatus.

Model test-apparatus.

19. A model of the apparatus for testing petroleum under this Act shall be deposited in the office of the Chemical Examiner to Government, Calcutta, and be marked with the words "Model test-apparatus."

Verification of test-apparatus.

20. [1] (1) The Chemical Examiner shall, on payment of the prescribed fee (if any), compare with the said model test-apparatus and verify every apparatus for testing petroleum which is submitted to him for the purpose.

[2] (2) If any apparatus for testing petroleum, when compared and verified as provided by sub-section (1), is found correct, or correct subject to certain corrections to be applied to the results of the tests, the Chemical Examiner shall stamp the same with a special number and with the date of the verification, and shall further give a certificate in writing under his hand, in the prescribed form, to the effect that on the date aforesaid the apparatus was compared and verified by him and found to be correct, or correct subject to certain specified corrections to be applied to the results of the tests.

(3) A certificate granted under this section shall, until the contrary is proved, be proof of the matters stated therein.

[3] (4) The Chemical Examiner shall keep a register, in the prescribed form, of all certificates granted under this section.

[4] (5) Subject to the payment of the prescribed fees (if any), the said model test-apparatus shall be at all reasonable times open to inspection by any person desiring to inspect it.

(Notes).

1.—"Sub-section (1)."

Fees for the verification of apparatus for testing petroleum.

No. 1475 F., dated the 9th October 1890.—Under the provisions of section 21, sub-section (1), of the Petroleum Act, XII of 1886, the Governor General in Council is pleased to prescribe the following rates of fees for the verification of apparatus for testing petroleum which may be submitted to the Chemical Examiner to Government, Calcutta, for that purpose, *viz.*—

Rs. 16 for the verification of one slide with one thermometer, which fee will cover the cost of engraving the name of the owner on the apparatus, and Rs. 10 for each additional slide or thermometer verified after the first.

(See Gazette of India, 1890, Pt. I, p. 734.) **A**

2.—"Sub-section (2)."

Form of certificate of verification of petroleum testing apparatus.

No. 1850 (Judicial), dated the 29th December 1899.—Under the provisions of S. 20, sub-section (2) of the Indian Petroleum Act, 1899 (VIII of 1899), the Governor General in Council is pleased, in supersession of the Notification of this Department No. 1079, dated the 2nd August 1890, to prescribe the following form of certificate of verification of petroleum testing apparatus :—

This is to certify that the apparatus stamped by me with the No. and with the date and provided with slides marked A and B and thermometers numbered on the stem 1, 2, 3 and 4 respectively, has been verified and compared with the Model Test Apparatus kept at the Chemical Examiner's Department, Calcutta, with the following results :—

1. When slide A is used with thermometer No. 1, the apparatus records the flashing point of an oil.*

2. When slide A is used with thermometer No. 2, the apparatus records the flashing point of an oil.*

3. When slide A is used with thermometer No. 3, the apparatus records the flashing point of an oil.*

4. When slide B is used with thermometer No. 1, the apparatus records the flashing point of an oil.*

5. When slide B is used with thermometer No. 2, the apparatus records the flashing point of an oil.*

6. When slide B is used with thermometer No. 3, the apparatus records the flashing point of an oil.*

For Viscid Oil.—With extra side thermometer (cylindrical bulbed) No. 4.

7. When slide A is used with thermometer No. 4, the apparatus records the flashing point of an oil.*

8 When slide B is used with thermometer No. 4, the apparatus records the flashing point of an oil.*

* If the apparatus records correctly enter here the word "correctly." If the apparatus records the flashing point above or below the truth as ascertained by comparison with the Model Test Apparatus, enter here "(degrees and decimals) too high" (or "too low", as the case may be).

The thermometers and aneroid barometer accompanying this apparatus have been standardised as in the attached cards.

(See Gazette of India, 1899, Pt. I, p. 1102). **B**

3.—"Sub-section (4)."

Form of Register of Certificates of verification of petroleum testing apparatus.

No. 1081, dated 2nd August 1890.—Under the provisions of S. 21, sub-sec. (4), of the Petroleum Act, XII of 1886, the Governor General in Council is pleased to prescribe the following form of Register to be kept by the Chemical Examiner to Government, Calcutta, of certificates of verification of petroleum testing apparatus granted under section 21, sub-section (2), of the Act.

REGISTER OF CERTIFICATES GRANTED UNDER S. 21 OF THE PETROLEUM ACT, XII OF 1886 (NOW S. 20 OF THE PETROLEUM ACT, VIII OF 1899).

Serial No.	Port at which the apparatus is intended to be used.	Number and date stamped on the Apparatus.	Contents of certificate.

(See Gazette of India, 1890, Pt. I, p. 596). C

4.—"Sub-section 5."

Fee for inspection of model test-apparatus.

No. 1474 (F), dated the 9th October 1890.—Under the provisions of S. 21, sub-section (5) of the Petroleum Act, XII of 1886, the Governor General in Council is pleased to prescribe a fee of one rupee for the inspection of the model test apparatus deposited in the Office of the Chemical Examiner to Government, Calcutta.

(See Gazette of India, 1890, Pt. I, p. 734). D

Miscellaneous.

Power to exempt petroleum from operation of Act.

21. The Local Government may, by notification in the local official Gazette, exempt [1] from the operation of all or any of the provisions of this Act, or of all or any of the rules made under this Act, any petroleum which has its flashing point at or above one hundred and twenty degrees of Fahrenheit's thermometer and is imported as ordinary cargo and in quantity not exceeding that specified in the notification.

(Notes).

1.—"Exempt."

(1) **Notification under this section exempting shale oil.**

For instance of—,see Bombay Government Gazette, 1899, Pt. I, p. 1154. E

(2) **Exemptions by the Government of Madras.**

For—, see Mad. R. & O. F

Power to apply Act to other substances.

22. (1) The Governor General in Council may, by notification in the Gazette of India, apply the whole or any portion of this Act to any substance, other than petroleum, and may by the notification fix, in substitution for the quantities of petroleum fixed by sections 5, 6 and 11, the quantities of the substance to which those sections shall apply.

(2) When the whole or any portion of this Act has been applied as aforesaid to any substance other than petroleum, the provisions so applied shall be construed with all necessary modifications and shall have effect as if such other substance had been included in the definition of petroleum.

(Notes).

(1) **Application of provisions of Ss. 8 to 15, 17, 18, 23 and 24.**

The provisions of—have been applied, under this section, to carbide of calcium —, see Notification No. 101—10, dated 4th January 1907, Gazette of India, 1907, Pt. I, p. 15. G

(2) **Application of sections of Petroleum Act, 1899 (VIII of 1899), to carbide of calcium and limit up to which it may be transported or kept by any person.**

No. 1118, Judicial, dated the 11th August 1899.—In exercise of the powers conferred by S. 22 of the Indian Petroleum Act, 1899 (VIII of 1899), the Governor General-in-Council is pleased to apply to carbide of calcium, the provisions of sections 5, 6, 8 to 10, 12 to 18, 23 and 24 of the said Act, and to fix 5 lbs. as the limit of the quantity of carbide of calcium which, under section 5 of the said Act as applied by this notification, may not be imported, transported, or kept without a license, and to fix 5 lbs. as the limit of the quantity of the carbide of calcium which, under S. 6 of the said Act, may be transported or kept by any one person or on the same premises without a lincense.

In exercise of the powers conferred by section 8 of the said Act, the Governor General in Council is further pleased to make the following rules :—

(1) Carbide of calcium kept or transported without a license under section 6 of the said Act as applied by this notification shall be kept in separate substantial hermetically closed metal vessels containing not more than one pound each.

(2) Carbide of calcium (*a*) which is imported or is kept at any place after 7 days from the date of its importation, or (*b*) which is transported, or (*c*) which is sold or exposed for sale shall be contained in hermetically

closed metal vessels, having attached thereto labels in conspicuous characters stating the description of the carbide of calcium with the addition of the words "dangerous if not kept dry and liable, if brought into contact with moisture, to give off a highly inflammable gas" and with the addition ; (*d*) in the case of a vessel kept, of the name and address of the consignee or owner ; (*e*) in the case of a vessel transported, of the name and address of the sender ; and (*f*) in the case of a vessel sold or exposed for sale, of the name and address of the vendor.

(See Gazette of India, 1899, Pt. I, p. 759). H

Power to limit operation of enactments relating to possession or transport of petroleum in municipalities.

23. The Governor General in Council may, by notification [1] in the Gazette of India and in the local official Gazette, limit, in any manner he deems fit, the operation of any enactment for the time being in force relating to local authorities in any local area or to any particular local authority, and the exercise of any power conferred by any such enactment, in so far as the enactment relates to the possession or transport of petroleum.

(Notes).

Notification limiting the operation of the Burma Municipal Act, 1898.

For—(Burma Act, III of 1898), see Gazette of India, 1908, Pt. I, p. 218. I

Previous publication, etc. of rules.

24. (1) Every power to make rules conferred by this Act is subject to the condition of the rules being made after previous publication in such manner [1] as the Governor General in Council may, by notification in the Gazette of India, direct.

(2) All rules made by the Governor General in Council or by the Local Government under this Act shall be published in the Gazette of India or the local official Gazette, as the case may be, and on such publication shall have effect as if enacted by this Act.

(Notes).

1.—"Publication in such manner."

Publication of draft Rules under Act.

No. 562, dated the 12th April 1889.—In exercise of the power conferred by section 24, sub-section (1) of the Indian Petroleum Act, 1899 (VIII of 1899), the Governor General in Council is pleased to direct, in supersession of the Notification of the Government of India in the Home Department, No. 187, dated the 1st February, 1887, that drafts of rules, which it may be proposed to make under the said Act, shall be published :—

(*a*) When the authority making the rules is a Local Government, in three consecutive issues of the local official Gazette in English and in such other language or languages as the Local Government may direct ; and,

1.—"Publication in such manner"—(Concluded).

(*b*) When the authority making the rules is the Governor General in Council, in three consecutive issues of the Gazette of India in English, and in three consecutive issues of the local official Gazette (if any) of every Local Government in British India in English and in such other language or languages as the local Government may direct.

(See Gazette of India, 1899, Pt. I, p. 244). J

Repeal.

25. The enactments mentioned in the second schedule are hereby repealed to the extent specified in the fourth column thereof.

THE FIRST SCHEDULE.

TESTING.

(*See section 3.*)

I.—Nature of the test-apparatus.

The apparatus consists of the following parts :—

(1) the oil-cup ;

(2) the cover, with slide, test-lamp, and clockwork arrangement for opening and closing the holes in the cover and for dipping the test flame ;

(3) the water-bath or heating vessel ;

(4) the tripod stand with jacket and spirit-lamp for heating the water-bath;

(5) the thermometer for indicating the temperature of the oil in the oil-cup ;

(6) the thermometer for indicating the temperature of the water in the water-bath;

(7) the thermometer for indicating the temperature of the oil before it is poured into the oil-cup ;

(8) the dropping bottle or *pipette* for replenishing the test lamp ; and

(9) a barometer standardised at the Meteorological Office of the Province or at any other place appointed by the Local Government.

The oil-cup is a cylindrical flat-bottomed vessel made of gun-metal or brass, and tinned or silvered inside. A gauge is fixed to the inside of the cup to regulate the height to which it is to be filled with the sample under examination.

The cup is provided with a close-fitting overlapping cover, which carries the thermometer, the test-lamp and the adjuncts thereto. The test-lamp is suspended upon two supports by means of trunnions, which allow it to be easily inclined to a particular angle and restored to its original position. Socket in the cover, which is to hold a round bulb thermometer for indicating the temperature of the oil during the testing operation, is so adjusted that the bulb of the latter is always inserted in a definite position below the surface of the liquid.

The cover is provided with three holes, one in the centre and two smaller ones close to the sides. These are closed and opened by means of a pivoted slide. When the slide is moved so as to uncover the holes, the suspended lamp is caught by a projection fixed on the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. As the slide moves back so as to cover the holes, the lamp returns to its original position. Upon the cover, in front of and in a line with the nozzle of the lamp, is fixed a white bead, the diameter of which represents the size of the test-flame to be used.

The water-bath or heating vessel is so constructed that, when the oil-cup is placed in position in it, an air-space or air-chamber intervenes between the two : consequently, in applying the test under ordinary circumstances, the heat is transmitted gradually to the oil from the hot water through the air-space. The water-bath is fitted with a socket for receiving a long bulb thermometer, to indicate the temperature of the water. It is also provided with a funnel, an overflowpipe and two handles.

The water-bath rests upon a tripod stand, which is fitted with a copper cylinder or jacket, so that the bath is surrounded by an enclosed air-space, which retains and regulates the heat. One of the legs of the stand serves as a support for a spirit lamp, which is attached to it by a small swing bracket.

The clockwork arrangement, by which during the operation of testing the slide is withdrawn, and the test-flame dipped into the cup and raised again as the slide is replaced, is provided with a ratchet key for setting it in action for each test, and with a trigger for starting it each time that the test-flame is applied.

II.—Directions for drawing the sample and preparing it for testing.

(1) *Drawing the sample.*—In all cases the testing officer or some person duly authorized by him shall personally superintend the drawing of the sample from an original unopened tin or other vessel.

An opening sufficiently large to admit of the oil being rapidly poured or cyphoned from the tin or other vessel shall be made.

Two bottles, each of the capacity of about forty fluid ounces, are to be filled with the oil. One of these, the contents of which is intended to be preserved for reference in case of need, is to be carefully corked, the cork being well driven home, cut off level with the neck, and melted sealing-wax worked into it. The other bottle may be either stoppered or corked.

(2) *Preparing the sample for testing.*—About ten fluid ounces of the oil, sufficient for three tests, are transferred from the bottle into which the sample has been drawn to a pint-flask or bottle, which is to be immersed in water artificially cooled until a thermometer, introduced into the oil, indicates a temperature not exceeding 50° Fahrenheit.

III.—Directions for preparing and using the test-apparatus.

(1) *Preparing the water-bath.*—The water-bath is filled by pouring water into the funnel until it begins to flow out at the overflow-pipe. The temperature of the water at the commencement of each test, as indicated by the long bulb thermometer, is to be 130° Fahrenheit, and this is attained in the first instance by mixing hot and cold water, either in the bath or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication; or the water is heated by means of the spirit-lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

(2) *Preparing the test-lamp.*—The test-lamp is fitted with a piece of cylindrical wick of such thickness that it fills the wickholder, but may readily be moved to and fro for the purpose of adjusting the size of the flame. In the body of the lamp, upon the wick, which is coiled within it, is placed a small tuft of cotton wool, moistened with petroleum, any oil not absorbed by the wool being removed. When the lamp has been lighted the wick is adjusted by means of a pair of forceps until the flame is of the size of the bead fixed on the cover of the oil cup; should a particular test occupy so long a time that the flame begins to get smaller, through the supply of oil in the lamp becoming exhausted, three or four drops of petroleum are allowed to fall upon the tuft of wool in the lamp from the dropping bottle or *pipette* provided for that purpose. This can be safely done without interrupting the test.

(3) *Filling the oil-cup.*—The oil-cup having been previously cooled, by placing it bottom downwards in water at a temperature not exceeding 50° Fahrenheit, is to be rapidly wiped dry, placed on a level surface in a good

light, and the oil to be tested is poured in very slowly, without splashing, until its surface is level with the point of the gauge which is fixed in the cup. The round bulb thermometer is inserted into the lid of the cup, care being taken that the projecting rim of the collar touches the edge of the socket; the test-lamp, prepared as already described, is placed in position, and the cover is then put on to the cup and pressed down so that its edge rests on the rim of the cup.

(4) *Application of the test.*—The water-bath, with its thermometer in position, is placed in some locality where it is not exposed to currents of air, and where the light is sufficiently subdued to admit of the size of the entire test-flame being compared with that of the bead on the cover. The cup is carefully lifted without shaking it, and placed in the bath, the test-lamp is lighted, and the clockwork wound up by turning the key. The thermometer in the oil-cup is now watched, and, when the temperature has reached 56° Fahrenheit, the clockwork is set in motion by pressing the trigger.

If no flash takes place, the clockwork is at once rewound and the trigger pressed at 57° Fahrenheit, and so on, at every degree rise of temperature, until the flash occurs, or until a temperature of 95° Fahrenheit has been reached.

If the flash takes place at any temperature below 77° Fahrenheit, the temperature at which it occurs is to be recorded. Two fresh portions of the sample are then to be successively tested in a similar manner and the results recorded. If no greater difference than 2° Fahrenheit exists between any two of the three recorded results, and if in no instance the flash has taken place within eight degrees of the temperature at which the testing is commenced, each result is to be corrected for atmospheric pressure as hereafter described, and the average of the three corrected results is the flashing point of the sample. In the event of there being a greater difference than 2° Fahrenheit between any two of the results, while in no instance has the flash taken place within eight degrees of the temperature at which the testing was commenced, the series of tests is to be rejected, and a fresh series of three similarly obtained, and soon, until a sufficiently concordant series is furnished, when the results are to be corrected and the average taken in the manner already described.

If, however, a flash has occurred at or below 60° when the test is applied in the manner above described, the next testing shall be commenced ten degrees lower than the temperature at which the flash had been previously obtained (that is to say, at 54° or thereunder), and this procedure shall be continued until the results of three consecutive tests do not show a greater difference than 2° and until a flash has not occurred in

any of the three tests within eight degrees of the temperature at which the testing is commenced : Provided always that, if at the commencement of the series of tests a flash has occurred on the first application of the test-flame at 56°, and if a flash has also occurred on the first application of the flame in each of three successive tests in which, thereupon, the test-flame is first applied at 46° as above directed, the testing officer shall certify that the petroleum has a flashing point below 47°, and the sample shall be reported dangerous.

If a temperature of 76° Fahrenheit has been reached without a flash occurring, the application of the test-flame is to be continued at every degree rise of temperature until a temperature of 95° Fahrenheit has been reached. If no flash has occurred up to this point, and if the petroleum is declared to be imported subject to the provisions of the Act, the tests shall not be continued, and the testing officer shall certify that the petroleum has a flashing point over 95° and is not dangerous. But, if the petroleum oil is ordinarily used for lubricating purposes and is declared to have its flashing point at or above 200° or is oil to which a notification of the Local Government exempting it from the operation of the Act will be applicable in the event of the flashing point being found to be at or above 120°, the test shall be continued as follows :—The oil-cup is to be removed from the water-bath, and the temperature of the water in the water-bath is to be reduced to 95° Fahrenheit by pouring cold water into the funnel (the hot water escaping by the overflowpipe). The air-chamber is then to be filled to a depth of 1½ inches with water at a temperature of about 95° Fahrenheit, the oil-cup is to be replaced in the water-bath and the spirit-lamp attached to the water-bath is to be lighted and placed underneath. The test-flame is then to be again applied, from 96° Fahrenheit, at every degree rise of temperature as indicated by the thermometer in the oil-cup until a flash takes place or until a temperature of 200° Fahrenheit, or 120° Fahrenheit, as the case may be, has been reached. If during this operation the test-flame appears to diminish in size, the lamp is to be replenished in the manner prescribed at 2 without interrupting the test.

If a flash occurs at any temperature between 76° and 200° Fahrenheit the temperature at which it occurs, subject to correction for atmospheric pressure, is the flashing point of the sample.

In repeating a test a fresh sample of oil must always be used, the tested sample being thrown away, and the cup must be wiped dry from any adhering oil and cooled, as already described, before receiving the fresh sample.

(5) *Correction for atmospheric pressure.*—As the flashing point of an oil is influenced by changes in atmospheric pressure to an average extent

of 1·6° Fahrenheit for every inch of the barometer, a correction of the observed flashing point may become necessary. The height of the barometer must therefore be determined at the time of making the test for the flashing point. The true height of the barometer for the purpose of the test shall be considered to be the height of the column of mercury measured at 32° Fahrenheit, which is supported by the air pressure at the time of the experiment; that is, the actual height of the barometer at the time of observation duly corrected for any error of the instrument and for its temperature if necessary. For the purpose of applying the correction to the flashing point of the oil obtained by the test, a table is appended to this schedule giving the flashing points of oils ranging from 65° to 80° Fahrenheit, under pressure ranging from 27 to 31 inches of mercury.

The table is used in the following manner:—

Example.—An oil has given a flashing point of 71°, the barometer being at 28·6 inches; take the nearest number to 71° in the vertical column headed 28·6. This number is 70·8. Substitute for this the number in the same horizontal line in the column headed 30 (the normal height of the barometer). The substituted number, that is, the true flashing point of the oil, is 73°.

6. Application of the test to viscous fluids or preparations such as solutions of India-rubber in mineral naphtha, or thick paint made with that material.

About a teaspoonful of the substance to be tested is placed in the cup, and the cover fitted with a thermometer is put on.

The cup thus prepared for the test is then cooled down until the thermometer indicates a temperature of 50° F. This may be accomplished either by placing the prepared cup in a refrigerator, or by immersing it up to its projecting collar in water which is maintained at a sufficiently low temperature until the result specified has been obtained.

The prepared cup thus cooled is then transferred to the water-bath, the temperature of which has previously been raised to 76° F. (The scale of the thermometer in the water-bath should range from 60° to 180° F.)

The test is then applied as described in section 4 of this part. If no flash has taken place when the temperature in the cup has reached 75°, the test need not be continued.

The temperature at which the flash occurs is the observed flashing point of the substance and, subject to correction of atmospheric pressure as prescribed in the Act, is the true flashing point.

(Note).

1.—"Para 6."

Legislative change.

This paragraph was added by Notification No. 928 (J.), dated the 28th June, 1900—*see* Genl. Stat. R. and O., Vol. III. **K**

IV.—Directions for determining the flashing point of petroleum which is not fluid at ordinary temperatures.

1. *Nature of the test-apparatus.*—The instrument employed is the Abel-Pensky petroleum testing apparatus, fitted with an additional thermometer to indicate the temperature of the oil in close proximity to the walls of the cup. This thermometer has a cylindrical bulb, $\frac{7}{8}$ inch in length and $\frac{3}{16}$ inch in diameter. It is scaled from 45° to 165° Fahrenheit, ten degrees on the scale occupying $\frac{3}{8}$ inch. The thermometer is held vertically in a socket attached to the cover of the oil-cup in such a position that the bulb is $\frac{1}{16}$ inch from the side of the cup.

(The thermometer can be removed and the orifice which is provided for it closed by means of an India-rubber plug, if the apparatus is required for testing petroleum in the ordinary way.)

2. *Directions for preparing the sample for testing.*—About ten fluid ounces of the oil are placed in a pint-flask, the mouth of which is then closed with an India-rubber stopper and the sample is liquified by placing the flask in a water-bath, the temperature of which is only raised sufficiently high to liquify the oil.

3. *Directions for preparing and using the test-apparatus.*—The water-bath and test-lamp are to be prepared in the manner prescribed in Part III of this schedule. The oil-cup is to be filled with the liquified oil, and the cover (into which both thermometers are to be previously inserted) placed on it, care being taken that the bulb of the additional thermometer is not brought into contact with the bracket-gauge fixed inside the cup. The oil-cup is then to be placed in a refrigerator, or plunged up to the projecting collar in water maintained at sufficiently low temperature, until both thermometers indicate the temperature at which the testing of petroleum is directed in Part III of this Schedule to be commenced. The oil-cup is then to be removed, wiped dry and placed in the water-bath, and the testing effected in the manner prescribed in Part III of this Schedule, the temperature indicated by the additional (vertical) thermometer alone being noted, and the average of three determinations, duly corrected for atmospheric pressure, being recorded as the flashing point of the sample, provided that no greater difference than 4° Fahrenheit exists between any two of such results.

Table for correction of flashing points indicated by the test for variations in Barometric pressure on either side of thirty inches.

Barometer in inches.

27	27·2	27·4	27·6	27·8	28	28·2	28·4	28·6	28·8	29	29·2	29·4	29·6	29·8	30	30·2	30·4	30·6	30·8	31
Flashing point in degrees Fahrenheit.																				
60·2	60·5	60·8	61·2	61·5	61·8	62·1	62·4	62·8	63·1	63·4	63·7	64	64·4	64·7	65	65·3	65·6	66	66·3	66·6
61·2	61·5	61·8	62·2	62·5	62·8	63·1	63·4	63·8	64·1	64·4	64·7	65	65·4	65·7	66	66·3	66·6	67	67·3	67·6
62·2	62·5	62·8	63·2	63·5	63·8	64·1	64·4	64·8	65·1	65·4	65·7	66	66·4	66·7	67	67·3	67·6	68	68·3	68·6
63·2	63·5	63·8	64·2	64·5	64·8	65·1	65·4	65·8	66·1	66·4	66·7	67	67·4	67·7	68	68·3	68·6	69	69·3	69·6
64·2	64·5	64·8	65·2	65·5	65·8	66·1	66·4	66·8	67·1	67·4	67·7	68	68·4	68·7	69	69·3	69·6	70	70·3	70·6
65·2	65·5	65·8	66·2	66·5	66·8	67·1	67·4	67·8	68·1	68·4	68·7	69	69·4	69·7	70	70·3	70·6	71	71·3	71·6
66·2	66·5	66·8	67·2	67·5	67·8	68·1	68·4	68·8	69·1	69·4	69·7	70	70·4	70·7	71	71·3	71·6	72	72·3	72·6
67·2	67·5	67·8	68·2	68·5	68·8	69·1	69·4	69·8	70·1	70·4	70·7	71	71·4	71·7	72	72·3	72·6	73	73·3	73·6
68·2	68·5	68·8	69·2	69·5	69·8	70·1	70·4	70·8	71·1	71·4	71·7	72	72·4	72·7	73	73·3	73·6	74	74·3	74·6
69·2	69·5	69·8	70·2	70·5	70·8	71·1	71·4	71·8	72·1	72·4	72·7	73	73·4	73·7	74	74·3	74·6	75	75·3	75·6
70·2	70·5	70·8	71·2	71·5	71·8	72·1	72·4	72·8	73·1	73·4	73·7	74	74·4	74·7	75	75·3	75·6	76	76·3	76·6
71·2	71·5	71·8	72·2	72·5	72·8	73·1	73·4	73·8	74·1	74·4	74·7	75	75·4	75·7	76	76·3	76·6	77	77·3	77·6
72·2	72·5	72·8	73·2	73·5	73·8	74·1	74·4	74·8	75·1	75·4	75·7	76	76·4	76·7	77	77·3	77·6	78	78·3	78·6
73·2	73·5	73·8	74·2	74·5	74·8	75·1	75·4	75·8	76·1	76·4	76·7	77	77·4	77·7	78	78·3	78·6	79	79·3	79·6
74·2	74·5	74·8	75·2	75·5	75·8	76·1	76·4	76·8	77·1	77·4	77·7	78	78·4	78·7	79	79·3	79·6	80	80·3	80·6
75·2	75·5	75·8	76·2	76·5	76·8	77·1	77·4	77·8	78·1	78·4	78·7	79	79·4	79·7	80	80·3	80·6	81	81·3	81·6

THE SECOND SCHEDULE.

ENACTMENTS REPEALED.

(*See section 25.*)

Year.	Number.	Short title.	Extent of repeal.
1886	XII	The Petroleum Act, 1886	The whole.
1890	XIV	The Petroleum Act (1886), Amendment Act, 1890.	Ditto.
1891	XII	The Repealing and Amending Act, 1891.	So much as relates to Act XII of 1886.
1897	XIV	The Indian Short Titles Act, 1897.	So much as relates to Act XIV of 1890.
1898	VII	The Petroleum Act, 1898.	The whole.

APPENDICES.

LOCAL RULES AND ORDERS.

Appendix A ... ... Bengal.
Do. B ... ... Bombay.
Do. C ... ... Madras.
Do. D ... ... Central Provinces and Berar.
Do. E ... ... Punjab.

APPENDIX A.

BENGAL.

(*See* Bengal Gazette, May 24, 1909, Pt. I, pp. 743-763.)

The 24th May 1909.

No. 43 Marine.—In exercise of the powers conferred on him by section 9 of the Indian Petroleum Act, 1899, and in supersession of the rules sanctioned under the notifications of this Government, No. 102, Marine, dated the 1st November 1892, No. 36, Marine, dated the 6th April 1906 and No. 37, Marine, dated the 6th April 1906, the Lieutenant-Governor is pleased, with the previous sanction of the Governor-General in Council, to make the following revised rules to regulate the importation, possession and transport of petroleum, in Bengal.

RULES UNDER SECTION 9 OF THE INDIAN PETROLEUM ACT, 1899, FOR THE IMPORTATION, POSSESSION AND TRANSPORT OF PETROLEUM IN THE PROVINCE OF BENGAL.

PART I.

PRELIMINARY.

Definitions. 1. In these rules,—

(*a*) "Part" means a part of these rules;

(*b*) "certificated petroleum" means petroleum certified to be non-dangerous petroleum by a certificate of such description as the Government of Bengal may, from time to time, by written order, prescribe, granted at the port of shipment;

(*c*) "petroleum in bulk" means petroleum in quantities exceeding five hundred gallons, contained in any one receptacle;

(*d*) "installation" means a place specially prepared for the storage of petroleum in bulk, or for bulk combined with non-bulk storage, and may be either a major or a minor installation;

(*e*) "major installation" means an installation—

(1) capable of containing an amount of oil, whether in bulk only or in combined bulk and non-bulk storage, exceeding fifty thousand gallons, or

(2) in which tin-making operations are carried on:

(*f*) "minor installation" means an installation—

(1) capable of containing an amount of oil, whether in bulk only or in combined bulk and non-bulk storage, not exceeding fifty thousand gallons, and

(2) in which no tin-making operations are carried on;

(*g*) "storage shed" means a building used for the storage of petroleum otherwise than in bulk, and may or may not form part of an installation;

(*h*) "protected works" includes buildings in which persons dwell or assemble, docks, wharves, timber yards, other petroleum stores, and any other place not forming part of an installation, which the Government of Bengal may by notification declare as such;

(*i*) "testing officer" means the testing officer appointed by the Government of Bengal under section 10 of the Act for any port at which petroleum may be imported under these rules;

(*j*) "motor-vehicle" means any vehicle or vessel propelled by a motor, in which petroleum is used as fuel;

(*k*) "owner," as applied to a motor-vehicle, includes a person who hires, or is otherwise entitled for the time being to use or work a motor vehicle;

(*l*) "the town of Calcutta" means all places within the local limits of the Original Civil Jurisdiction of the High Court of Judicature at Fort William in Bengal;

(*m*) "the Municipality of Calcutta" means the municipal limits of Calcutta as defined in the Calcutta Municipal Act, 1899;

(*n*) "suburbs of Calcutta" means the local area for the time being excluded from the general police district of Bengal by notification under section 1 of the Calcutta Suburban Police Act, 1866.

PART II.

POSSESSION AND TRANSPORT OF PETROLEUM.

CHAPTER I.—POSSESSION OF PETROLEUM.

Smoking prohibited.

1. No smoking shall be permitted inside any installation or storage shed.

Supervision of operations within installation or storage shed.

2. All operations within any installation or storage shed shall be conducted under the supervision of a responsible agent or supervisor.

Cleanliness of installation.

3. The ground in the interior of an installation shall be kept clean and free from goods of a combustible nature, vegetation and rubbish.

Supply of sand or dry earth in installation.

4. A supply of sand or dry earth shall always be kept in an installation for the purpose of extinguishing fire.

Making of capacity of tanks.

5. The capacity in gallons of every tank in an installation shall be conspicuously marked on it, and shall be calculated at the rate of 6·25 gallons per cubic foot.

Protection from lightning.

6. Every tank or other receptacle for the storage of petroleum in bulk, except a tank or receptacle which is not of sufficient capacity to contain ten thousand gallons of petroleum and which is so situated as not to be liable to cause danger in the event of the petroleum being ignited, shall be protected by an efficient lightning-conductor.

Explanation.—A tank or receptacle shall be deemed to be so situated as not to be liable to cause danger in the event of the petroleum being gnited, if it is not in close proximity to any other tank or receptacle, or to any building not forming part of the installation, and if it is surrounded by a wall, or embankment, or sunk in an excavation, the enclosure thus formed being sufficient to contain the whole contents of the tank or receptacle.

Testing of lightning-conductor by licensee.

7. Not less than once in every year the licensee of an installation shall test or cause to be tested the efficiency of the conductor in such manner as the Chief Inspector of Explosives may, by general or special order, declare to be sufficient, and a certificate showing the date of the last test shall be posted in a conspicuous place within the installation.

Official testing of lightning-conductor.

8. Any officer appointed by the Government of Bengal in this behalf may enter any installation for the purpose of testing the efficiency of the conductor, at any time after sunrise and before sunset.

Time for work in installations or storage sheds.

9. No installation or storage shed shall be open, and no work in any installation or storage shed shall be permitted, between sunset and sunrise; provided that in cases where electric lightning is exclusively used, night working may be permitted by the Government of Bengal on the recommendation of the Chief Inspector of Explosives.

Closure of pipes and openings.

10. Where there are any pipes or openings for draining out water in any enclosure wall, arrangements shall be made whereby they can be closed, and they shall only be kept open when actually necessary for drainage purposes. The nature of such arrangements shall be shown in the specifications which are required under rule 10 of Chapter IV of this Part, to be submitted with the application for a license.

Material for storage sheds.

11. All storage sheds in an installation shall be built of uninflammable material.

Posting up of rules and conditions.

12. There shall be hung up in a conspicuous place in every installation and storage shed for which a license has been granted, copies in English and the vernacular, of the rules contained in this Chapter, and of the conditions endorsed on the license.

CHAPTER II.—TRANSPORT OF PETROLEUM.

Conditions of carriage of petroleum in bulk by water.

1. Petroleum in bulk shall not be carried by water except on a ship certified as suitable for the carriage of petroleum in bulk by an officer appointed by the Government of Bengal in this behalf, and the petroleum shall be stowed in such part of the ship and in such manner as may be approved, by general or special order, by the authority so appointed.

Petroleum in bulk on barges or flats.

2. Petroleum in bulk shall not, except with the sanction of the Government of Bengal, be transported on any barge or flat which is not towed by a steamer or motor-tug.

Inflammable cargo, or passengers.

3. No ship shall carry petroleum in bulk which carries at the same time passengers, or any inflammable cargo other than petroleum and its products.

Towage of barge or flat carrying petroleum.

4. No steamer carrying inflammable cargo other than petroleum and its products shall tow a barge or flat carrying petroleum in bulk.

Towage of additional barge or flat carrying inflammable cargo.

5. No steamer towing a barge or flat carrying petroleum in bulk shall at the same time tow any other barge or flat carrying inflammable cargo other than petroleum and its products.

Exemption of petroleum having a flashing point above 150°.

6. Rules 4 and 5 of this Chapter shall not apply when the petroleum carried in bulk has a flashing point above 150° Fahrenheit.

Cleaning of compartments.

7. When any ship has discharged petroleum in bulk, the oil compartments shall be thoroughly cleaned and freed from petroleum and petroleum vapour, before any other cargo or passengers are taken on board.

Hatches to be kept closed.

8. The hatches of oil tanks in all ships certified under rule 1 of this Chapter as suitable for the carriage of petroleum in bulk, and the manholes in the hatches, shall be kept closed (except in so far as it may be necessary to open them to take on board or discharge petroleum or to clean tanks), so long as there is petroleum in the tanks, and until the tanks have been thoroughly cleaned and freed from petroleum and petroleum vapour.

Loading and discharge.

9. No petroleum in bulk shall be taken on board or discharged from any ship certified as suitable for the carriage of petroleum in bulk, except through a suitable pipe prepared for the purpose.

Naked lights, fire or smoking prohibited.

10. No fire, naked lights or smoking shall be allowed on board any flat or barge carrying petroleum in bulk.

Flag to be carried.

11. The person in charge of any flat or barge carrying petroleum in bulk shall, from sunrise to sunset, show at its stern a conspicuous red flag having the words "Petroleum Boat" marked on it in black letters.

Loading and unloading by night.

12. No petroleum in bulk shall be loaded on or unloaded from any ship between sunset and sunrise, except when electric light is exclusively used.

Validity of license granted in another province.

13. Petroleum may be transported into and within the Province of Bengal under cover of a license granted by the prescribed authority in any other province of British India or in any area outside British India to which the Indian Petroleum Act, 1899, may be applied, provided that the conditions of such license are observed throughout the period during which the petroleum is in transit.

Transport by sea of petroleum which has not been tested.

14. Petroleum which has been imported into the Port of Calcutta, and which has not been tested at the port of import in accordance with the rules contained in Part III, shall not be transported to any other port in British India save one specified in rule 1 of that Part, and the provisions of all the rules of that Part, except rule 22, shall be deemed to apply to such petroleum when it arrives at such other port.

Transport by sea of petroleum which has been tested.

15. Petroleum which has been tested at any port in British India may be transported to any other port in British India, and the provisions of rules 2, 3, 4, 14 (except the proviso), 16, 19 and 20 of Part III shall apply to such petroleum when it arrives at such other port.

CHAPTER III.—GENERAL PROVISIONS RELATING TO LICENSES.

Applications for licenses.

1. All applications for licenses except those referred to in rules 13 and 14 of Chapter IV of this Part, for the possession or transport of petroleum shall be made to the District Magistrate.

The functions of the District Magistrate under this rule and the rule next following and under rule 5 (2) of Chapter IV of this Part shall be exercised in the Town of Calcutta and its suburbs by the Commissioner or Deputy Commissioner of Police.

Licensing authority.

2. Licenses—

(*a*) for the possession of non-dangerous petroleum, not being petroleum in bulk,

(*b*) for the possession of non-dangerous petroleum in a minor installation,

(*c*) for the possession or transport if dangerous petroleum in quantities not exceeding forty gallons, and

(*d*) for the transport of petroleum, not being dangerous petroleum, otherwise than by a pipe line,

may be granted by a District Magistrate, or by such other authority as the Government of Bengal may, from time to time by order in writing, appoint in this behalf. In all other cases, except as provided in rule 14 of Chapter IV of this Part, the licensing authority shall be the Government of Bengal :

Provided that in the case of renewals of existing licenses the Government of Bengal may delegate its powers under this rule to the District Magistrate or to such other authority as the Government of Bengal may, from time to time by an order in writing, appoint in this behalf.

Refusal of license.

3. The licensing authority may, for reasons to be communicated to the applicant, refuse a license in any case :

Provided that the licensing authority shall not refuse a license for the possession of petroleum in a minor installation, unless such authority has first made a reference to the Chief Inspector of Explosives and obtained his concurrence.

Forfeiture of license.

4. Every license granted under these rules shall be liable to be forfeited for any contravention of the Act, or of any rule thereunder, or of any condition contained in such license, or for any other reason deemed by the licensing authority to be good and sufficient, and recorded by him in writing.

Particulars of license..

5. Every license and pass granted under these rules shall be held subject to the conditions endorsed on it, and shall contain all the particulars which are contained in the form prescribed for it by these rules :

Provided that in the case of installations and storage sheds in existence before these rules were made, the license may contain in lieu of the particulars contained in the form prescribed for it by these rules, either such particulars as may have been entered in the license granted for such installation or storage shed under the rules heretofore in force, or such particulars as may in each case be approved by the Chief Inspector of Explosives.

Renewal of licenses.

6. (1) Every application for the renewal of a license shall be made in the same manner as an application for an original license.

(2) Every such application shall be made at a date not less than thirty days before the date on which the original license expires, and, if the application is so made, the premises shall be held to be duly licensed until such date as the licensing authority issues the renewed license or until an intimation that the renewal of the license is refused has been communicated to the applicant.

(3) The same fee shall be charged for the renewal of a license as for a new license.

Supply of rules to licensee.

7. When any license is granted for the possession or transport of petroleum. a copy of the rules contained in Chapter I of this Part in the case of a license for possession, and in Chapter II of this Part in the case of a license for transport, printed in English and the vernacular, shall be given, together with the license, to the licensee.

Procedure on death or disability of licensee.

8. Where a licensee dies or becomes insolvent or becomes mentally incapable or otherwise disabled, the person carrying on the business of such licensee shall not be liable to any penalty or forfeiture under the Act or these rules for acting under the license during such time as may reasonably be necessary to allow him to make an application for a new license in his own name for the unexpired portion of the original license.

Loss of license.

9. Where a license granted under these rules is lost or accidentally destroyed, a duplicate may be granted.

CHAPTER IV.—LICENSES FOR THE POSSESSION OF PETROLEUM.

Continuance of license.

1. Save as provided in rules 13 and 14 of this Chapter, every license for the possession of petroleum shall remain in force until the 31st of December next following the date of issue of the license.

Petroleum not in bulk, other than dangerous petroleum.

2. Licenses for the possession of petroleum, not being dangerous petroleum, otherwise than in bulk, may be granted in Form A.

Dangerous petroleum not in bulk.

3. Licenses for the possession of dangerous petroleum, not in bulk, in quantity exceeding forty gallons may be granted in Form B.

Dangerous petroleum not exceeding forty gallons.

4. Licenses for the possession of dangerous petroleum in quantity not exceeding forty gallons may be granted in Form C.

Transfer of certain licenses.

5. (1) The holder of a license in Forms A, B or C, may, at any time before the expiry of the license, apply for permission to transfer his license to another person.

(2) Such application shall be made to the District Magistrate who shall, if he approves of the transfer, enter upon the license, under his signature, an endorsement to the effect that the license has been transferred to the person named.

(3) A fee of Re. 1 shall be charged on each such application.

(4 The person to whom the license is so transferred shall enjoy the same powers and be subject to the same obligations under the license as the original holder.

Possession of dangerous petroleum in receptacles containing more than forty gallons each.

6. Special licenses for the possession of dangerous pretroleum in receptacles containing more than forty gallons, but not more than 500 gallons each, may be granted on such terms as the Government of Bengal may prescribe on the recommendation of the Chief Inspector of Explosives.

Storage in major installations.

7. Licenses for the possession of any stated quantity of petroleum, not being dangerous petroleum, in major installations, in accordance with such specifications and plans as the Government of Bengal, on the recommendation of the Chief Inspector of Explosives, may, from time to time, by general or special order, approve, may be granted in Form D.

Storage in minor installations.

8. Licenses for the possession of any stated quantity of petroleum, not being dangerous petroleum, in minor installations, in accordance with such specifications and plans as the Chief Inspector of Explosives may from time to time, by general or special order, approve, may be granted in Form E.

Dangerous petroleum for use on motor-vehicles.

9. (1) Licenses in Form F may be granted free of charge for the possession of dangerous petroleum for use on motor-vehicles and for its transport thereon, for the purpose of use therein.

(2) The provisions of the ordinary rules relating to the possession of dangerous petroleum shall regulate the possession of dangerous petroleum for use on motor-vehicles save in so far as these provisions are varied by the conditions of the license.

Particulars to be given in applications for licenses for the possession of petroleum other than licenses under rules 4 and 9.

10. Every application for license for the possession of petroleum, other than licenses under rules 4 and 9 of this Chapter, shall specify :—

(*a*) the description and quantity of petroleum which the applicant desires to keep,

(*b*) the name and position of the premises intended to be used for the storage of such petroleum, and whether the said premises fulfil the conditions prescribed by Form A, Form B, Form D, or Form E, as the case may be,

(*c*) the amount of petroleum, if any, already licensed to be kept on the same premises.

If the application be made for the first time in respect of any major or minor installation or if the quantity of petroleum to be stored in such an installation is to be increased, the application shall be accompanied by specifications and plans drawn to scale.

Certificate of safety to be furnished.

11. Before petroleum is stored in any major or minor installation for which a license has been granted for the first time, a certificate shall be furnished to the licensing authority to the effect that all enclosure walls and embankments required to be constructed under the conditions of the license are sufficient to ensure safety. The certificate shall be signed by an engineer accepted as qualified for the purpose by the licensing authority. When the license is not granted for the first time but is granted for an increased quantity of petroleum, a cirtificate shall similarly be furnished to the licensing authority before any quantity of petroleum exceeding the amount which was admissible under the former license is stored in the installation.

Particulars to be given in applications for licenses under rules 4 and 9.

12. Every application for a license under rules 4 and 9 of this Chapter shall specify :—

(a) whether the applicant is the owner of a motor-vehicle,

(b) the amount of dangerous petroleum the applicant desires to store,

(c) the exact position and nature of the premises intended to be used for the storage of such dangerous petroleum, and whether the said premises fulfil the conditions prescribed by Form C or Form F, as the case may be.

Storage by Port authorities.

13. Licenses for the possession of petroleum in an installation or storage shed may be granted by the Government of Bengal free of charge to the Commissioners of the Port of Calcutta, subject to such conditions, and for such period, as the Government of Bengal may direct.

Storage in an installation or storage shed erected on land belonging to Port authorities.

14. Licenses for the possession of petroleum in an installation or storage shed erected on land belonging to the Commissioners of the Port of Calcutta may, with the previous sanction of the Government of Bengal, be granted free of charge by the said Commissioners, subject to such conditions and for such period as the Government of Bengal may direct.

CHAPTER V.—LICENSES FOR THE TRANSPORT OF PETROLEUM.

General licenses for the transport of non-dangerous petroleum.

1. General licenses for the transport of petroleum, other than dangerous petroleum, may be granted for a period of twelve months in Form G.

General licenses for the transport of dangerous petroleum.

2. General licenses for the transport of dangerous petroleum, otherwise than in bulk, may be granted for a period of twelve months in Form H.

Effect of general license.

3. Licenses granted under rules 1, 2 and 9 of this chapter may authorise the holders to transport petroleum without restriction as to destination or total quantity.

Pass for transport of petroleum.

4. The holder of a general license granted under rules 1, 2 or 9 of this Chapter shall, with each consignment of petroleum conveyed under cover of his license, issue to the person who takes charge of the petroleum for the purpose of transporting it, a numbered pass in Form I.

Special licenses for the transport of petroleum other than dangerous petroleum.

5. Special licenses may be granted for the transport of petroleum, other than dangerous petroleum, in quantities exceeding five hundred gallons in Form J.

Special licenses for the transport of dangerous petroleum

6. Special licenses may be granted for the transport of dangerous petroleum other than in bulk in Form K.

Effect of special license.

7. A special license granted under rules 5 and 6 shall only cover the transport of the particular consignment entered in the license, and shall be valid for such period as may be entered in it.

Particulars to be given in applications for special licenses.

8. Applications for special licenses for the transport of petroleum by rail, by road, by steamer or by barge, or by two or more of these modes of conveyance, shall specify the description and quantity of petroleum to be transported, and the places from and to which, respectively, the petroleum is to be conveyed, and rhall describe the receptacles in which it is to be contained, or, in the case of petroleum to be transported in bulk by water, shall state that the ship in which it is to be carried has been certified as required by rule 1 of Chapter II of this Part.

Transport of dangerous petroleum by motorists otherwise than on a motor-vehicle.

9. General licenses in Form L to transport dangerous petroleum up to a maximum of sixty gallons at a time, otherwise than on a motor-vehicle, may be granted for a period of twelve months to owners of motor-vehicles holding licenses under rule 9, sub-rule (1) of Chapter IV of this Part, to possess petroleum and use or transport it on a motor-vehicle.

CHAPTER VI.—FEES.

Method of levying fees.

1. (1) Where the proceeds of fees leviable for licenses under these rules have been assigned by the Government of Bengal to any local authority, the fees shall be levied in such manner as the local authority may from time to time direct.

(2) In all other cases the fees shall be paid in cash on receipt of a notice from the licensing authority that a license will be granted.

(3) The Court-fee stamp of the value of eight annas representing the fee chargeable under Schedule II, Article 1 (*b*) of the Court Fees Act on an application for a license presented to a Magistrate should be attached to the application.

Fees for licenses for possession of petroleum.

2. The following fees shall be charged for licenses for the possession of petroleum, namely :—

Non-dangerous petroleum.

	Rs.	
(*a*) When the quantity to be stored exceeds five hundred but does not exceed one thousand gallons.	12	
(*b*) When the quantity to be stored exceeds one thousand but does not exceed five thousand gallons.	12	for the first one thousand gallons, *plus* Rs. 2 for every additional one thousand gallons or part thereof.

	Rs.	
(c) When the quantity to be stored exceeds five thousand gallons but does not exceed fifty thousand gallons.	20	for the the first five thousand gallons, *plus* Rs. 4 for every additional one thousand gallons or part thereof.
(d) When the quantity to be stored exceeds fifty thousand gallons.	250	

Dangerous petroleum.

	Rs.	
(e) When the quantity to be stored does not exceed forty gallons.	3	
(f) When the quantity to be stored exceeds forty gallons but does not exceed five hundred gallons.	8	
(g) When the quantity to be stored exceeds five hundred gallons.		the same fees as those laid down for non-dangerous petroleum.

Fees for licenses for transport of petroleum.

3. The following fees shall be charged for licenses for the transport of petroleum :—

Non-dangerous petroleum.

Special license—	Rs.
(a) When the quantity to be transported exceeds five hundred but does not exceed five thousand gallons.	1
(b) For every additional five thousand gallons or part of five thousand gallons.	1
General license for the transport of non-dangerous petroleum by rail, by road, or by water for twelve months.	100

Dangerous petroleum.

Special license—

	Rs.	
(i) When the quantity to be transported does not exceed forty gallons.	2	
(ii) When the quantity to be transported exceeds forty gallons but does not exceed four hundred and eighty gallons.	2	for the first forty gallons, *plus* 8 annas for every additional forty gallons or part thereof.
(iii) When the quantity to be transported exceeds four hundred and eighty gallons.	8	for the first four hundred and eighty gallons, *plus* Rs. 2 for every additional four hundred and eighty gallons or part thereof.
General license for the transport of dangerous petroleum by the owner of a motor-vehicle by road, rail or water, up to a maximum of sixty gallons at a time.	5	
General license for the transport of dangerous petroleum by dealers by rail, road or water.	50	

Fee for license granted for unexpired portion of an original license.

4. A fee of one Rupee shall be charged for a new license for the unexpired portion of an original license granted to any person applying for the same in accordance with the provisions of rule 8 of Chapter III of this Part.

Fee for duplicate licenses.

5. A fee of eight annas shall be charged for a duplicate of a license granted in accordance with the provisions of rule 9 of Chapter III of this Part.

PART III.

OF IMPORTATION OF PETROLEUM.

Calcutta.

1. The port mentioned in the margin is hereby declared to be the only port at which petroleum may be imported.

Declaration by master of ship carrying petroleum or by the ship's agent.

2. The master of every ship carrying petroleum shall deliver to the pilot before entering any of the ports mentioned in rule 1, a written declaration under his signature stating—

(*a*) what quantity of petroleum the ship is carrying;

(*b*) whether any and, if so, what part of it is dangerous petroleum;

(*c*) whether any and, if so, what part of it is certificated petroleum;

(*d*) whether any and, if so, what part of it is petroleum having a flashing-point above 150° of Fahrenheit's thermometer; and

(*e*) what quantity of petroleum [specifying whether any, and if so, what part of it belongs to each of the classes (*b*), (*c*) and (*d*)] it is intended to land at that port or at any other port in British India:

Provided that. if, in anticipation of a ship's arrival, the agent for such ship delivers to the Port Officer a written declaration as aforesaid under his signature, no such declaration shall be necessary by the master of the ship.

Delivery of certificate.

3. If the master or agent declares that any petroleum is certificated petroleum which it is intended to land at that port or at any other port in British India, he shall deliver to the pilot, along with his declaration, the certificate relating to such petroleum.

Certificate and declaration to be forwarded to Asssistant Harbour Master.

4. Every certificate and declaration delivered to a pilot under rules 2 and 3 shall be made over by him without delay to the Assistant Harbour Master who shall transfer them without delay to the Superintendent of the Port Commissioners' Petroleum Wharf at Budge Budge.

Delivery of samples.

5. (1) When the master of, or the agent for, a ship has made the declaration required by rule 2, the Superintendent of the Petroleum Wharf shall direct an officer to go on board the vessel and obtain samples of all the petroleum on board which it is intended to land at that port. If the importer so desires he shall also take samples of all the petroleum on board which it is intended to land at any other port in British India.

(2) The master shall deliver to the officer aforesaid, without charge, samples of every variety of petroleum comprised in the petroleum of which samples are to be taken under clause (1). Such samples shall, if such officer so require, be taken from the particular receptacles indicated by him and under his personal superintendence, and shall not exceed forty fluid ounces:

Provided that when the petroleum is in cases, samples may be taken as delivery proceeds.

Selection of samples.

6. The minimum number of samples to be selected of each brand or quality contained in the cargo shall be as follows :—

(*a*) of certificated petroleum in cases—

one sample for every fifteen thousand cases or fraction of fifteen thousand cases ;

(*b*) of certificated petroleum in casks or drums declared to be of uniform quality—

one sample for every one hundred and twenty thousand gallons or part of one hundred and twenty thousand gallons ;

(*c*) of certificated petroleum in bulk or in tanks—

one sample from each group of tanks or tank compartments certified to be of the same brand or quality ;

(*d*) of petroleum other than certificated, in cases—

one sample for every ten thousand cases or fraction of ten thousand cases;

(*e*) of petroleum other than certificated, in casks or drums declared to be of uniform quality—

one sample for every eighty thousand gallons or part of eighty thousand gallons;

(*f*) of petroleum other than certificated in bulk or in tanks—

one sample from each tank or tank compartment.

Sealing of samples and forwarding the same to testing officer.

7. When the samples required have been delivered to the officer aforesaid, such officer shall forthwith seal the bottles containing the samples, and shall label them with the name of the ship, the name of the consignee, and such other distinguishing marks as may be necessary. He shall then forward them to the testing officer.

Methods of test.

8. The testing officer shall test the samples thus received in the manner laid down in the first schedule to the Act.

Averaging results of tests.

9. If more than one sample of any one brand or quality forming the cargo or a portion of the cargo of a ship is sent to the testing officer for report, that officer shall test each sample separately and strike an average of the results. If the average flashing-point is not lower than 73° of Fahrenheit's thermometer, and no one test gives a flashing-point below 70° of that thermometer, he shall report the whole of the potroleum represented by the samples to the Port Commissioners as non-dangerous.

Procedure when tests show want of uniformity.

10. If the testing officer, after testing samples, considers further tests necessary to satisfy him that none of the petroleum is dangerous, he shall report to the Port Commissioners accordingly.

Procedure on report.

11. On receipt of a report under rule 10—

(*a*) when the consignment is imported in cases, the Port Commissioner shall cause the petroleum in question to be landed, or to be discharged into boats, and the officer referred to in rule 5 shall select and deliver to the testing officer one sample from every thousand cases,

(*b*) when the consignment is imported in bulk, the Port Commissioners shall forward a second sample and, until receipt of the testing officer's further report, may prevent the landing of any portion of the contents of the tank in question, or may permit it to be landed as provided in rule 18 ;

(*c*) if the petroleum has been already landed and stored under rule 18, samples shall be selected as aforesaid.

Report of testing officer.

12. The testing officer shall, as soon as practicable, and ordinarily within twenty-four hours after receipt of any samples, sign a report certifying that they are, or are not, dangerous petroleum, as the case may be, and shall forward such report to the office of the Port Commissioners, where it shall be deposited.

Fee for testing.

13. The fee for testing each sample shall be five rupees: Provided that the total amount of the fees chargeable under this rule shall not, in the case of any one ship, exceed Rs. 50.

When a ship carrying petroleum may anchor at ordinary anchorage.

14. A ship may proceed to the usual anchorage in any port specified in rule 1 and there discharge any certificated petroleum not exceeding five thousand gallons in quantity:

Provided that the officer whose duty it is, under rule 5, to select samples of petroleum on board, may at any time take a sample of any such petroleum for the purpose of having it tested.

Exception in respect of petroleum declared dangerous which is not in excess of forty gallons.

15. If the quantity of petroleum declared dangerous on board a ship does not exceed forty gallons and there is no other petroleum on board, or the aggregate quantity of petroleum on board, including petroleum declared dangerous, does not exceed forty gallons, the said petroleum may be forthwith landed.

When a ship carrying petroleum must anchor at a special anchorage.

16. Save as provided in rules 14 and 24, every ship having petroleum on board shall be anchored at such anchorage as the Conservator of the port shall appoint in this behalf, and shall not, except for the purpose of discharge of bulk-oil petroleum as laid down in rule 19, leave such anchorage until so much of the petroleum as it is intended to land at that port has been discharged.

Such anchorage shall in no case be the same as that for vessels laden with explosives, and shall be sufficiently far removed from the anchorage for vessels laden with explosives to prevent the possibility of a fire originating at the former place affecting vessels anchored at the latter.

Petroleum referred to in rule 16 not to be landed until it has been tested.

17. Save as provided in rule 18, no petroleum shall be landed from any ship referred to in rule 16 until the testing officer's report in respect thereof has been received in the office of the Port Commissioners.

Landing of petroleum in anticipation of the testing officer's report.

18. (1) The Port Commissioners may, in anticipation of the testing officer's report, allow the consignee of any petroleum to discharge the same into boats or to land it.

(2) Such permission shall be subject to the condition that the boats into which the petroleum is discharged shall remain at such place as may be directed by the Port Commissioners, or that the petroleum shall be landed at a landing-place duly appointed for this purpose, and be stored in an installation licensed under rule 13 or 14 of Chapter IV, Part II.

Landing of petroleum in bulk.

19. When petroleum is imported in bulk, its removal from the ship shall be effected by means of a hose and a metal pipe, and it shall be pumped into storage-tanks. The discharge shall be continuous, day and and night, until completed, weather and appliances permitting. When working at night electric light only shall be used; and, when the ship has finished discharging, the pipe to the storage-tanks shall immediately be emptied by means of a supplementary pump on shore. If for any cause the discharge of petroleum is at any time suspended, arrangements must be made by means of a valve for effectually preventing any of the oil left in the pipe from escaping.

Landing of petroleum otherwise than in bulk.

20. When petroleum imported otherwise than in bulk is landed within the port—

(1) it shall be landed either at jetties provided for the purpose, or in cargo-boats, and, except where electric light is exclusively used, only after sunrise and before sunset, and only at such place or places as the Conservator of the port shall direct;

(2) dangerous and non-dangerous petroleum shall not be conveyed to the shore at the same time on the same cargo-boat;

(3) no smoking, fire or light of any description (other than lights required by the port rules), shall be allowed in any cargo-boat during the time that the petroleum is on board the boat.

Transhipment of petroleum.

21. Petroleum may be transhipped from one ship to another for conveyance to any other port, whether within or beyond the limits of British India:

Provided that—

(*a*) the petroleum shall not be transhipped between sunset and sunrise except when electric light is exclusively used.

(*b*) dangerous and non-dangerous petroleum shall not be conveyed at the same time on any boat which is used for transhipping the petroleum, and

(*c*) no smoking, fire or light of any description (other than lights required by the port rules), shall be allowed on any boat which is being used for transhipping the petroleum from the one ship to the other.

Import-licenses how obtainable.

22. (1) Applications for import licenses under section 5 of the Act shall be submitted to the officer appointed by the Government of Bengal in this behalf, who will, after enquiry, forward the same with his opinion to the Government of Bengal.

(2) If the application is granted, a license in Form M, signed by a Secretary to the Government, shall be forwarded to the applicant through the officer to whom his application was submitted. The license may be granted for a period of twelve months.

Petroleum comprised in ship's stores.

23. Nothing in the foregoing rules in this part applies to petroleum, other than dangerous petroleum, comprised in a ship's stores and manifested as such, provided it is not of unreasonably large amount. If any question arises as to whether any petroleum manifested as ship's stores is of an unreasonably large amount, the decision thereon of the Collector of Customs shall be final.

Petroleum having a flashing point above 150°.

24. Nothing in the foregoing rules in this part applies to petroleum which has a flashing point above 150° of Fahrenheit's thermometer. If the master of, or agent for, a ship certifies in writing that any petroleum on board is of this description, the Port Commissioners shall allow it to be discharged in the same manner as ordinary cargo; but the Superintendent of Petroleum Wharf, may at any time require a sample of any portion of it to be delivered to him, with a view to having it tested.

FORM A.

(RULE 2 OF CHAPTER IV OF PART II.)

License to possess petroleum (other than dangerous petroleum), otherwise than in bulk.

No. Fee Rs.

LICENSE is hereby granted to for the storage in the storage shed described below, of gallons of petroleum, subject to the rules for the storage of petroleum published in Notification No. 43 Marine, dated the 24th May 1909, and to the further conditions on the back of this license.

District Magistrate.

Commissioner of Police, Calcutta.

The 190 .

[Description of the storage shed above referred to.]

ENDORSEMENT ON FORM A.

Conditions of the License.

1. If the licensing officer call on the holder of a license, by a notice in writing, to execute any repairs of the storage shed, which may, in the opinion of such officer, be necessary for the safety of the shed, the holder of the license shall execute the repairs within such period, not being less than one month from the date of receipt of the notice, as may be fixed by the notice.

2. The storage shed shall be constructed of masonry or other uninflammable material with terraced, tiled or iron roofs and with tiled or paved or earthen floors, but the beams, rafters, columns, windows and doors may be of wood.

3. Either the doorways and other openings of the storage shed shall be built up to a height of two feet above the level of the road or street, or the floor sunk to a depth of two feet below the level of the road or street, so that the petroleum cannot flow out from the building in case of its escape from the receptacle in which it is contained, or the building itself shall be surrounded with a masonry wall or embankment or both not less than two feet high. When the quantity of petroleum stored exceeds 16,000 gallons the height or depth shall be three feet.

A combination of these methods is permissible.

4. The following distances shall be kept clear round the building :—

Distances to be kept clear round buildings or enclosure walls.	Number of gallons to be stored.
None	5,000 and under.
20 feet	over 5,000 and up to 50,000.
30 ,, ...	Unlimited.

5. No light, except a light of such strength, position and character as is not liable to ignite any inflammable vapour, nor fire of any description, shall be permitted within the storage shed.

FORM B.

(RULE 3 OF CHAPTER IV OF PART II.)

License to possess dangerous petroleum, otherwise than in bulk in quantity exceeding forty gallons.

No. Fee Rs.

LICENSE is hereby granted to for the storage, in the storage shed described below, of gallons of dangerous petroleum, subject to the rules for the storage of petroleum published in Notification No. 43 Marine, dated the 24th May 1909, and to the further conditions on the back of this license.

Secretary to the Government of Bengal.

The 190 .

[Description of the storage shed above referred to.]

ENDORSEMENT ON FORM B.

Conditions of License.

1. If the licensing officer call upon the holder of a license, by notice in writing, to execute any repairs of the storage shed, which may, in the opinion of such officer, be necessary for the safety of the shed, the holder of the license shall execute the repairs within such period, not being less than one month from the date of receipt of the notice, as may be fixed by the notice.

2. The license-holder is prohibited from delivering any quantity of dangerous petroleum exceeding three gallons to any one who has not a license under section 5 or section 6 of the Act, or any less quantity of such petroleum, except in accordance with the conditions of the proviso to section 6 of the Act, as to the vessels in which the petroleum must be contained.

3. The petroleum shall be stored in gas-tight tinned or galvanized sheet iron, steel or lead plate receptacles containing each not more than forty gallons and fitted with well-made filling holes and well-fitting screw plugs, or fitting with screw cap or other cap with metal air-tight under cap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch; provided that wood cases shall not be necessary when the receptacles are made of tinned or galvanized sheet iron or steel, and have the following thickness of metal :—

	Not less than
(1) When the capacity does not exceed two gallons ...	27 B. W. G.
(2) When the capacity exceeds two gallons but does not exceed four gallons	22 B. W. G.
(3) When the capacity exceeds four gallons but does not exceed eight gallons	20 B. W. G.
(4) When the capacity exceeds eight gallons but does not exceed twenty gallons	16 B. W, G.
(5) When the capacity exceeds twenty but does not exceed thirty gallons	14 B. W. G.
(6) When the capacity exceeds thirty but does not exceed forty gallons	12 B. W. G.

4. An air-space of at least one-tenth of its capacity shall be left in each receptacle at the time of filling.

5. The receptacles shall be so substantially constructed and secured as not to be liable except, under circumstances of grave negligence or extraordinary accident, to be broken or become defective, leaky or insecure.

6. The receptacles shall be labelled in accordance with the provisions of section 7 of the Act.

7. Any receptacle, before being repaired, shall be cleared of all dangerous petroleum and of all dangerous vapours arising from the same.

8. The storage shed shall be constructed of masonry or other uninflammable material with terraced, tiled or iron roofs and with tiled or paved or earthen floors.

9. Either the doorways and other openings of the storage shed shall be built up to a height of two feet above the level of the road or street, or the floor sunk to a depth of two feet below the level of the road or street, so that the pertoleum cannot flow out from the building in case of its escape from the receptacle in which it is contained, or the building itself shall be surrounded with a masonry wall or embankment or both not less than two feet high. When the quantity of petroleum stored exceeds 16,000 gallons the height or depth shall be three feet.

A combination of these methods is permissible.

10. All ventilating openings in the storage shed shall be protected by strong wire gauze.

11. No light, except a light of such strength, position and character as is not liable to ignite any inflammable vapour, nor fire of any description, shall be permitted at any time within the storage shed.

12. All due precautions shall be taken for the prevention of unauthorised persons having access to any dangerous petroleum kept and to the vessels containing or having actually contained the same.

13. Every person managing or employed on or in connection with the storage shed shall abstain from any act whatever which tends to cause fire or explosion and which is not reasonably necessary, and shall prevent any other person from doing such act.

14. The drum or other receptacle containing dangerous petroleum shall only be opened on the licensed premises at or immediately adjoining the storage shed and for the time necessary for drawing off the petroleum, and during such drawing off every reasonable precaution shall be adopted for preventing the escape of dangerous petroleum or the vapour therefrom.

15. The following distances shall be kept clear from protected works round the storage shed :—

Quantity to be stored.			Distances to be kept clear.
Not exceeding	500	gallons	20 feet.
From	500 to 1,000	,, ...	25 ,,
,,	1,000 to 5,000	,, ...	30 ,,
,,	5,000 to 15,000	,, ...	40 ,,
,,	15,000 to 25,000	,, ...	50 ,,
,,	25,000 to 35,000	,, ...	60 ,,
,,	35,000 to 50,000	,, ...	70 ,,
,,	50,000	gallons and over	100 ,,

Provided that these distances may be reduced by the Government of Bengal on the recommendation of the Chief Inspector of Explosives in cases where screen walls are provided, or other special precautions taken, or where there are special circumstances that in the opinion of the Chief Inspector of Explosives warrant the reduction.

16. Provided that when the quantity to be possessed does not exceed 60 gallons, the provisions of conditions 8, 9 and 15 shall not apply, but the licensee shall observe the following conditions :—

(i) The storage shed in which the dangerous petroleum is stored shall be well ventilated and constructed of uninflammable material, provided however that the doors and windows may be of wood.

(ii) Where a storage shed forms part of or is attached to another building and when the intervening floor or partition is of an unsubstantial or inflammable character or has openings therein, the whole of such building shall be deemed to be the storage shed and no portion of such storage shed shall be used as a dwelling-house or as a place where persons assemble. The storage shed shall have a separate entrance from the open air distinct from any building or dwelling in which persons assemble.

17. The storage shed shall be liable to inspection by an officer not being of lower rank than an Inspector of Police authorized by the Government of Bengal in this behalf.

FORM C.

(RULE 4 OF CHAPTER IV OF PART II.)

License to possess dangerous petroleum in quantity not exceeding forty gallons.

No. Fee Rs. 3.

LICENSE is hereby granted to for the storage, in the storage shed described below, of gallons of dangerous petroleum, subject to the rules for the storage of petroleum published in Notification No. 43 Marine, dated the 24th May 1909, and to the further conditions on the back of this license.

District Magistrate.

Commissioner of Police, Calcutta.

The 190 .

[Description of the storage shed above referred to.]

ENDORSEMENT ON FORM C.

Conditions of License.

1. If the licensing officer call upon the holder of a license, by notice in writing, to execute any repairs of the storage shed which may, in the opinion of such officer, be necessary for the safety of the shed, the holder of the license shall execute the repairs within such period, not being less than one month from the date of receipt of the notice, as may be fixed by the notice.

2. The license-holder is prohibited from delivering any quantity of dangerous petroleum exceeding three gallons to any one who has not a license under section 5 or section 6 of the Act, or any less quantity of such petroleum, except in accordance with the conditions of the proviso to section 6 of the Act, as to the vessels in which the petroleum must be contained.

3. The petroleum shall be stored in gas-tight tinned or galvanized sheet iron, steel or lead plate receptacles containing each not more than ten gallons and fitted with well-made filling holes and well-fitting screw plugs, or fitted with screw cap or other cap with metal air-tight undercap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch; provided that wood cases shall not be necessary when the receptacles are made of tinned or galvanized sheet iron or steel, and have the following thickness of metal :—

	Not less than
(1) When the capacity does not exceed two gallons...	27 B. W. G.
(2) When the capacity exceeds two gallons but does not exceed four gallons	22 B. W. G.
(3) When the capacity exceeds four gallons but does not exceed eight gallons	20 B. W. G.
(4) When the capacity exceeds eight gallons	16 B. W. G.

4. An air-space of at least one-tenth of its capacity shall be left in each receptacle at the time of filling.

5. Receptacles shall be so substantially constructed and secured as not to be liable, except under circumstances of grave negligence or extraordinary accident, to be broken or become defective, leaky or insecure.

6. The receptacles shall be labelled in accordance with the provisions of section 7 of the Act.

7. Any receptacle, before being repaired, shall be cleared of all dangerous petroleum and of all dangerous vapours arising from the same.

8. The storage shed in which the dangerous petroleum is stored shall be well ventilated and constructed of uninflammable materials; provided, however, that the doors and windows may be of wood.

9. All ventilating openings in the storage shed shall be protected by strong wire-gauze.

10. No light, except a light of such strength, position and character as is not liable to ignite any inflammable vapour, nor fire of any description, shall be permitted at any time within the storage shed.

11. All due precautions shall be taken for the prevention of unauthorized persons having access to any dangerous petroleum kept and to the vessels containing or having actually contained the same.

12. Every person managing or employed on or in connection with the storage shed shall abstain from any act whatever which tends to cause fire or explosion and which is not reasonably necessary and shall prevent any other person from doing such act.

13. The drum or other receptacle containing dangerous petroleum, shall only be opened on the licensed premises at or immediately adjoining the storage shed and for the time necessary for drawing off the petroleum, and during such drawing off every reasonable precaution shall be adopted for preventing the escape of dangerous petroleum or the vapour therefrom.

14. Where a storage shed forms a part of or is attached to another building, and where the intervening floor or partition is of an unsubstantial or inflammable character or has openings therein, the whole of such building shall be deemed to be the storage shed and no portion of such storage shed shall be used as a dwelling or as a place where persons assemble. The storage shed shall have a separate entrance from the open air distinct from any building or dwelling in which persons assemble.

15. The storage shed shall be liable to inspection by an officer not being of lower rank than an Inspector of Police, authorised by the Government of Bengal in this behalf.

FORM D.

(RULE 7 OF CHAPTER IV OF PART II.)

License to possess petroleum, not being dangerous petroleum, in a major installation.

No. Fee Rs.

LICENSE is hereby granted to for the storage, in the place described below, of gallons of petroleum, not being dangerous petroleum, subject to the rules for the storage of petroleum published in Notification No. 43 Marine, dated the 24th May 1909, and to the further conditions on the back of this license.

Secretary to the Government of Bengal.

The 190 .

[Description of the place above referred to.]

ENDORSEMENT ON FORM D.

Conditions of License.

1. Each tank shall either be separately surrounded by a wall or embankment of substantial construction, or shall be partially sunk in an excavation. The enclosure thus formed shall be of dimensions sufficient to contain 10 per cent. more oil than the tank is capable of containing, and shall be so constructed as to prevent the escape therefrom of any oil in the form of liquid, whether under the action of fire or otherwise. Settling or measuring tanks* may be situated within the wall or excavation but otherwise the space enclosed by such wall or excavation, and not occupied by the tank, shall be kept entirely clear and unoccupied.

2. In the case of all storage sheds within the installation, either the doorways and other openings of the building shall be built up to a height of three feet above the level of the ground outside it, or the floor shall be sunk to a depth of three feet below the level of the ground, or the building itself shall be surrounded with a masonry wall or embankment or both not less than trhee feet high.

3. The height of any storage tank shall not be more than three-fifths of its diameter.

4. A distance of not less than one hundred feet shall be kept clear between one storage tank and another, or between a storage tank and a storage shed, the distance being measured between the nearest points of the perimeters of the storage tanks or storage sheds, as the case may be.

5. A distance of not less than one hundred and fifty feet shall be kept clear between any storage tank or shed and any protected work.

6. The distances specified in conditions 4 and 5 may be reduced by the Government of Bengal on the recommendation of the Chief Inspector of Explosives in cases where screen walls are provided or other special precautions taken or where there are special circumstances that, in the opinion of the Chief Inspector of Explosives, warrant the reduction.

7. No fire or lights other than those necessary for soldering purposes, shall be permitted within the installation except in the office, living quarters, engine-room, boiler-house and smithy.

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* These tanks shall not have a greater capacity than 30,000 gallons.

FORM E.

(RULE 8 OF CHAPTER IV OF PART II.)

License to possess petroleum, not being dangerous petroleum, in a minor installation.

No. Fee Rs.

LICENSE is hereby granted to for the storage, in the place described below, of gallons of petroleum. not being dangerous petroleum, subject to the rules for the storage of petroleum published in Notification No. 43 Marine, dated the 24th May 1909, and to the further condition on the back of this license.

District Magistrate.

Commissioner of Police, Calcutta.

The 190 .

[Description of the place referred to.]

ENDORSEMENT ON FORM E.

Conditions of License.

1. Every tank of which the capacity exceeds fifteen thousand gallons shall either be separately surrounded by a wall or embankment of substantial construction, or shall be sunk in an excavation. The enclosure thus formed shall be of dimensions sufficient to contain the total quantity of oil capable of being contained in the tank and shall be so constructed as to prevent the escape therefrom of any oil in the form of liquid, whether under the action of fire or otherwise. The space enclosed by such wall or excavation and not occupied by the tanks, shall be kept entirely clear and unoccupied.

2. The distance to be kept clear between a tank and the walls or embankments which surround it shall be, measuring from the ground level—

(*a*) for horizontal tanks, not less than one-third the height of the tank;

(*b*) for perpendicular tanks, not less than one-half the height of the tank.

3. The height of walls or embankments surrounding the installation shall be not less than two feet six inches from the ground level.

4. The following distances shall be kept clear between protected works not forming part of the installation and the enclosure walls or embankments :—

Where the number of gallons stored is—	Distance to be kept clear.
5,000 and under	Not less than 15 feet.
Over 5,000 and up to 20,000	Ditto 20 ,,
Over 20,000 and up to 50,000	Ditto 30 ,,

Provided that these distances may be reduced by the Government of Bengal on the recommendation of the Chief Inspector of Explosives in cases where screen walls are provided or other special precautions taken, or where there are special circumstances which in the opinion of the Chief Inspector of Explosives warrant the reduction.

5. Soldering shall only be permitted in a separate room or building placed as far from the tanks as can be conveniently arranged, in which no storage or filling shall be permitted. No more tins shall be allowed in the soldering room at any one time than are necessary for expeditious working.

6. No fire or lights, except those necessary in the soldering room and watchman's house, shall be permitted.

7. If the installation contains tanks of which the capacity does not exceed fifteen thousand gallons, either—

(*a*) each tank shall be separately enclosed in the manner prescribed in condition 1, or

(*b*) the entire installation shall be surrounded by a masonry wall or embankment or a combination of these forming an enclosure of dimensions sufficient to contain, and prevent the overflow of, all the oil that may be stored at any one time within such walls or embankments.

8. In the case of all storage sheds within the installation, which is not surrounded by a masonry wall or embankment as provided in clause (*b*) of condition 7, either the doorways and other openings of the building shall be built up to a height of two feet above the level of the ground outside it, or the floor sunk to a depth of two feet below the level of the ground, so that the petroleum cannot flow out from the building in case of its escape from the receptacle in which it is contained, or the building itself shall be surrounded with a masonry wall or embankment or both not less than two feet high. When the quantity of petroleum stored exceeds 16,000 gallons, the height or depth shall be three feet. A combination of these methods is permissible.

FORM F.

(RULE 9 OF CHAPTER IV OF PART II.)

Special license to possess and transport dangerous petroleum for owners of motor-vehicles

No. Free of charge.

LICENSE is hereby granted to owner (or hirer) of a motor-vehicle (or vehicles) for the possession of gallons of dangerous petroleum for use therein at* and for its transport on the said motor-vehicle (or vehicles) for the purpose of use therein, subject to the rules for the possession and transport of dangerous petroleum published in Notification No. 43 Marine, dated the 24th May 1909, and to the conditions at the back of this license.

When the quantity exceeds 40 gallons. *Secretary to the Government of Bengal.*

When the quanity does not exceed 40 gallons. { *District Magistrate.* / *Commissioner of Police, Calcutta.* }

The *190* .

ENDORSEMENT ON FORM F.

Conditions of the License.

1. The dangerous petroleum shall not be kept, used or transported except in gas-tight tinned or galvanized sheet iron, steel or lead plate drums or receptacles containing each not more than 4 gallons and fitted with well-made filling holes and well-fitting screw plugs, or fitted with screw cap or other cap with metal air-tight under cap. Such drums or receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch. Provided that wood cases shall not be necessary when the drums or receptacles are made of tinned or galvanized sheet iron, or steel, and have the following thickness of metal :—

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 gallons	22 B. W. G.

2. The drums or receptacles shall be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure.

*Situation and description of storage shed above referred to.

3. Every such vessel, not forming part of a motor-vehicle, when used for transporting or keeping dangerous petroleum, shall bear the words "Dangerous Petroleum—Highly inflammable" legibly and indelibly stamped or marked thereon, or on a metallic or enamelled label attached thereto.

4. An air-space of at least one-tenth of its capacity shall be left in each drum or receptacle at the time of filling to allow for expansion of the dangerous petroleum.

5. Before repairs are done to any such vessel, that vessel shall, as far as practicable, be cleaned by the removal of all dangerous petroleum and of all dangerous vapours derived from the same.

6. The storage shed in which the dangerous petroleum is stored shall be well ventilated and constructed of uninflammable materials, provided, however, that the doors and windows may be of wood.

7. Where a storage shed forms part of, or is attached to, another building, and when the intervening floor or partition is of an unsubstantial or inflammable character, or has an opening therein, the whole of such building shall be deemed to be the storage shed, and no portion of such storage shed shall be used as a dwelling, or as a place where persons assemble. A storage shed shall have a separate entrance from the open air distinct from that of any dwelling or building in which persons assemble.

8. The amount of dangerous petroleum to be kept in any one storage shed whether or not upon motor-vehicles, shall not exceed sixty gallons at any one time.

9. The filling or replenishing of any vessels with dangerous petroleum shall not be carried on, nor shall the contents of any such vessel be exposed, in the presence of fire or artificial light, except a light of such construction, position and character as not to be liable to ignite any inflammable vapour, and no artificial light shall be brought within dangerous proximity of the place where any vessel containing dangerous petroleum is being kept.

10. In the case of all dangerous petroleum kept or transported for the purpose of, or in connection with any motor-vehicle, (*a*) all due precautions shall be taken for the prevention of accidents by fire or explosion and for the prevention of unauthorised persons having access to any dangerous petroleum kept or transported and to the vessels containing, or having actually contained, the same, and (*b*) every person managing or employed on or in connection with any motor-vehicle shall abstain from every act, whatever which tends to cause fire or explosion, and which is not reasonably necessary, and shall prevent any other person from committing such act.

11. The storage shed shall be liable to inspection by an officer not being of lower rank than an Inspector of Police, authorised by the Government of Bengal in this behalf.

FORM G.

(RULE I OF CHAPTER V OF PART II.)

General license to transport petroleum other than dangerous petroleum.

No. Fee Rs. 100.

A GENERAL license is hereby granted to to transport petroleum, other than dangerous petroleum, subject to the rules contained in Chapter V of Part II of Bengal Government Notification No. 43 Marine, dated the 24th May 1909, and to the condition at the back of this license.

This license shall continue in force till the ..

District Magistrate.

Commissioner of Police, Calcutta.

The *190* .

ENDORSEMENT ON FORM G.

Condition of the License.

The petroleum, if not in bulk, shall be packed in air-tight tins or drums of steel or iron, or other receptacles not easily broken, or in tank-carts of a pattern approved by the Government of Bengal in this behalf, or in bottles securely stoppered and carefully packed so as to avoid risk of breakage.

FORM H.

(RULE 2 OF CHAPTER V OF PART II)

General license to transport dangerous petroleum otherwise than in bulk.

No. Fee, Rs. 50.

A GENERAL license is hereby granted to to transport dangerous petroleum otherwise than in bulk, subject to the rules contained in Chapter V of Part II of Bengal Government Notification No. 43 Marine, dated the 24th May 1909, and to the further conditions on the back of this license.

This license shall continue in force till the .

Secretary to the Government of Bengal.

When the quantity to be transported at a time exceeds 40 gallons.	*District Magistrate.*
When the quantity to be transported at a time does not exceed 40 gallons.	*Commissioner of Police, Calcutta.*

The *190* .

ENDORSEMENT ON FORM H.

Conditions of License.

1. The petroleum must be contained in gas-tight tinned or galvanized sheet-iron, steel or lead-plate receptacles containing each not more than forty gallons and fitted with well-made filling holes and well-fitting screw plugs, or with screw cap or other cap with metal air-tight under cap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch :

Provided that wooden cases shall not be necessary where the receptacles are made of tinned or galvanized sheet-iron or steel, and have the following thickness of metal :

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 but does not exceed 4 gallons	22 B. W. G.
(3) When the capacity exceeds 4 but does not exceed 8 gallons	20 B. W. G.
(4) When the capacity exceeds 8 but does not exceed 20 gallons	16 B. W. G.
(5) When the capacity exceeds 20 but does not exceed 30 gallons	14 B. W. G.
(6) When the capacity exceeds 30 but does not exceed 40 gallons	12 B. W. G.

2. An air-space of at least one-tenth of its capacity must be left in each receptacle at the time of filling.

3. The receptacles must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit.

4. The nature of the contents and the words "Highly inflammable" must be distinctly marked on the receptacles.

FORM I.

(RULE 4 OF CHAPTER V OF PART II.)

PASS to be granted by the holder of General License No. for the transport of dangerous/non-dangerous petroleum otherwise than in bulk/in bulk or otherwise than in bulk subject to the rules contained in Chapter V of Part II of Bengal Government Notification No. 43 Marine, dated the 24th May 1909, and to the further conditions on the back of this pass.

This pass covers (drums/tins/cases/packge dangerous/non-dangerous containing)* gallons of

* To be omitted when the petroleum is transported in bulk.

petroleum being the property of while in transport from to

The *190* . *Holder of General License No.*

ENDORSEMENT ON FORM I.

Condition of Pass.

I.—For dangerous petroleum in the case of the holder of a license in Form H.

1. The petroleum must be contained in gas-tight tinned or galvanized sheet iron, steel, or lead plate receptacles containing each not more than forty gallons and fitted with well-made filling holes and well-fitting screw plugs, or with screw cap or other cap with metal air-tight under cap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch:

Provided that wooden cases shall not be necessary where the receptacles are made of tinned or galvanized sheet-iron or steel, and have the following thickness of metal:

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 but does not exceed 4 gallons	22 B. W. G.
(3) When the capacity exceeds 4 but does not exceed 8 gallons	20 B. W. G.
(4) When the capacity exceeds 8 but does not exceed 20 gallons	16 B. W. G.
(5) When the capacity exceeds 20 but does not exceed 30 gallons	14 B. W. G.
(6) When the capacity exceeds 30 but does not exceed 40 gallons	12 B. W. G.

2. An air-space of at least one-tenth of its capacity must be left in each receptacle at the time of filling.

3. The receptacles must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit.

4. The nature of the contents and the words "Highly inflammable" must be distinctly marked on the receptacles.

II.—For dangerous petroleum in the case of the holder of a license in Form L.

1. The quantity of dangerous petroleum to be transported under this pass shall not exceed 60 gallons.

2. The petroleum must be contained in gas-tight tinned or galvanized sheet iron, steel, or lead plate receptacles containing each not more than four gallons and fitted with well-made filling holes and well-fitting screw plugs, or with screw cap or other cap with metal air-tight under cap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch:

Provided that wooden cases shall not be necessary where the receptacles are made of tinned or galvanized sheet-iron or steel and have the following thickness of metal:

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 gallons ...	22 B. W. G.

3. An air-space of at least one-tenth of its capacity must be left in each receptacle at the time of filling.

4. The receptacles must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit.

5. The nature of the contents and the words "Highly inflammable" must be distinctly marked on the receptacles.

III.—For petroleum other than dangerous petroleum.

The petroleum, if not in bulk, shall be packed in air-tight tins or drums or steel or iron, or other receptacles not easily broken, or in tank-carts of a pattern approved by the Government of Bengal in this behalf, or in bottles securely stoppered and carefully packed so as to avoid risk of breakage.

FORM J.

(RULE 5 OF CHAPTER V OF PART II.)

Special license to transport petroleum other than dangerous petroleum.

No. Fee Rs.

LICENSE is hereby granted to to transport from to *(cases or packages containing)* gallons of petroleum subject to the rules contained in Chapter V of Part II of Bengal Government Notification No. 43 Marine, dated the 24th May 1909, and to the further condition on the back of this license.

* To be omitted when the petroleum is transported in bulk.

The license shall continue in force till the day of

District Magistrate.

Commissioner of Police, Calcutta.

The *190* .

ENDORSEMENT ON FORM F.

Condition of the License.

The petroleum, if not in bulk, shall be packed in air-tight tins or drums of steel or iron, or other receptacles not easily broken, or in tank-carts of a pattern approved by the Local Government in this behalf, or in bottles securely stoppered and carefully packed so as to avoid risk of breakage.

FORM K.

(RULE 6 OF CHAPTER V. OF PART II.)

Special license to transport dangerous petroleum.

No. Fee Rs.

LICENSE is hereby granted to of to transport cases or packages containing in all gallons of dangerous petroleum from to , subject to the rules contained in Chapter V of Part II of Bengal Government Notification No. 43 Marine, dated the 24th May 1909, and to the further conditions on the back of this license.

The amount of petroleum in each case or package is stated below.

This license shall continue in force till the day of

When the quantity exceeds 40 gallons. *Secretary to the Government of Bengal.*

When the quantity does not exceed 40 gallons. *District Magistrate.* / *Commissioner of Police, Calcutta.*

The *190* .

ENDORSEMENT ON FORM K.

Conditions of License.

1. The petroleum must be contained in gas-tight tinned or galvanized sheet-iron, steel or lead plate receptacles containing each not more than forty gallons and fitted with well-made filling holes and well-fitting screw plugs, or with screw cap or other cap with metal air-tight under cap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch :

Provided that wooden cases shall not be necessary where the receptacles are made of tinned, or galvanized sheet-iron or steel, and have the following thickness of metal :—

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 but does not exceed 4 gallons	22 B. W. G.
(3) When the capacity exceeds 4 but does not exceed 8 gallons	20 B. W. G.
(4) When the capacity exceeds 8 but does not exceed 20 gallons	16 B. W. G.
(5) When the capacity exceeds 20 but does not exceed 30 gallons	14 B. W. G.
(6) When the capacity exceeds 30 but does not exceed 40 gallons	12 B. W. G.

2. An air-space of at least one-tenth of its capacity must be left in each receptacle at the time of filling.

3. The receptacles must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit.

4. The nature of the contents and the words "Highly inflammable" must be distinctly marked on the receptacles.

FORM L.

(RULE 9 OF CHAPTER V OF PART II.)

General license to the owner of a motor-vehicle to transport dangerous petroleum otherwise than on a motor-vehicle.

No. Fee Rs. 5.

A GENERAL license is hereby granted to to transport dangerous petroleum, otherwise than in bulk, up to $\frac{40}{60}$ gallons at a time, subject to the rules contained in Chapter V of Part II of Bengal Government Notification No. 36 Marine, dated the 24th May 1909, and to the further conditions on the back of this license.

This license shall continue in force till the

When the quantity exceeds 40 gallons. *Secretary to the Government of Bengal.*

When the quantity does not exceed 40 gallons. *District Magistrate.* / *Commissioner of Police, Calcutta.*

The *190* .

ENDORSEMENT ON FORM L.

Conditions of License.

1. The petroleum must be contained in gas-tight tinned or galvanized sheet-iron, steel, or lead plate receptacles containing each not more than 4 gallons and fitted with well-made filling holes and well-fitting screw plugs, or with screw cap or other cap with metal air-tight under cap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch:

Provided that wooden cases shall not be necessary where the receptacles are made of tinned or galvanized sheet-iron or steel and have the following thickness of metal:—

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 gallons	22 B. W. G.

2. An air-space of at least one-tenth of its capacity must be left in each receptacle at the time of filling.

3. The receptacles must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit.

4. The nature of the contents and the words "Highly inflammable" must be distinctly marked on the receptacles.

FORM M.

[RULE (22) 2 OF PART III.]

General license to import dangerous petroleum in quantities exceeding 40 gallons.

A GENERAL license is hereby granted to to import dangerous petroleum at the port of Calcutta, subject to the rules contained in Part III of Bengal Government Notification No. 43 Marine, dated the 24th May 1909, and to the further conditions on the back of this license.

This license shall continue in force till the

Secretary to the Government of Bengal.

The *190* .

ENDORSEMENT ON FORM M.

Conditions of License.

1. Dangerous petroleum shall be imported in gas-light tinned or galvanized sheet-iron steel or lead plate receptacles containing each not more than 40 gallons and fitted with well-made filling holes and well-fitting screw plugs, or with screw cap or other cap with metal air-tight under cap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch :

Provided that wooden cases shall not be necessary where the receptacles are made of tinned or galvanized sheet-iron or steel and have the following thickness of metal :—

	Not less than
(1) When the capacity does not exceed 2 gallons ..	27 B. W. G.
(2) When the capacity exceeds 2 but does not exceed 4 gallons	22 B. W. G.
(3) When the capacity exceeds 4 but does not exceed 8 gallons	20 B. W G.
(4) When the capacity exceeds 8 but does not exceed 20 gallons	16 B. W. G.
(5) When the capacity exceeds 20 but does not exceed 30 gallons	14 B. W. G.
(6) When the capacity exceeds 30 but does not exceed 40 gallons	12 B. W. G.

2. An air-space of at least one-tenth of its capacity shall be left in each receptacle at the time of filling.

3. The receptacles must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit.

APPENDIX B.

BOMBAY.

See Bombay Gazette, May 20, 1909, Pt. 1, pp. 813--862.

CONTENTS.

PART I.

PRELIMINARY.

RULES.

1. Definitions

PART II.

POSSESSION AND TRANSPORT OF PETROLEUM.

CHAPTER I.—Of possession of Petroleum.

1. Smoking prohibited.
2. Supervision of operations within installation or storage shed.
3. Cleanliness of installation.
4. Supply of sand or dry earth in installation.
5. Marking of capacity of tanks.
6. Protection from lightnin

RULES.

7. Testing of lightning-conductor by licensee.
8. Official testing of lightning-conductor.
9. Time for work in installations or storage sheds.
10. Closure of pipes and openings.
11. Material for storage sheds.
12. Posting up of rules and conditions.

CHAPTER II.—Transport of Petroleum.

1. Conditions of carriage of petroleum in bulk by water.
2. Petroleum in bulk on barges or flats.
3. Inflammable cargo, or passengers.
4. Towage of barge or flat carrying petroleum.
5. Towage of additional barge or flat carrying in flammable cargo.
6. Exemption of petroleum having a flashing point above 150°.
7. Cleaning of compartments.
8. Hatches to be kept closed.
9. Loading and discharge.
10. Naked lights, fire or smoking prohibited.
11. Flag to be carried.
12. Loading and unloading by night.
13. Validity of license granted in another Province.
14. Transport by sea of petroleum which has not been tested.
15. Transport by sea of petroleum which has been tested.

CHAPTER III.—General Provisions relating to Licenses.

1. Applications for licenses.
2. Licensing authority.
3. Refusal of license.
4. Forfeiture of license.
5. Particulars of license.
6. Renewal of licenses.
7. Supply of rules to licensee.
8. Procedure on death or disability of licensee.
9. Loss of license.

CHAPTER IV.—Licenses for the possession of Petroleum.

1. Continuance of license.
2. Petroleum not in bulk other than dangerous petroleum.
3. Dangerous petroleum not in bulk.
4. Dangerous petroleum not exceeding forty gallons.
5. Transfer of certain licenses.
6 Possession of dangerous petroleum in receptacles containing more than forty gallons each.
7. Storage in major installations.
8. Storage in minor installations.
9. Dangerous petroleum for use on motor-vehicles.
10. Particulars to be given in applications for licenses for the possession of petroleum other than licenses under rules 4 and 9.
11. Certificate of safety to be furnished.
12. Particulars to be given in applications for licenses under rules 4 and 9.

RULES.

13. Storage by port authorities.
14. Storage in an installation of storage shed erected on land belonging to port authorities.

CHAPTER V.—Of Licenses for the transport of Petroleum.

1. General licenses for the transport of non-dangerous petroleum.
2. General licenses for the transport of dangerous petroleum.
3. Effect of general license.
4. Pass for transport of petroleum.
5. Special licenses for the transport of petroleum other than dangerous petroleum.
6. Special licenses for the transport of dangerous petroleum.
7. Effect of special license.
8. Particulars to be given in applications for special licenses.
9. Transport of dangerous petroleum by motorists otherwise than on a motor-vehicle.

CHAPTER VI.—Fees.

1. Method of levying fees.
2. Fees for licenses for possession of petroleum.
3. Fees for licenses for transport of petroleum.
4. Fee for license granted for unexpired portion of an original license.
5. Fee for duplicate licenses.

PART III.

IMPORTATION OF PETROLEUM.

1. Ports of importation.
2. Declaration by master of ship carrying petroleum or by the ship's agent.
3. Delivery of certificate.
4. Certificate and declaration to be forwarded to Chief Customs-officer.
5. Delivery of samples.
6. Selection of samples.
7. Sealing of samples and forwarding the same to testing officer.
8. Methods of test.
9. Averaging results of tests.
10. Procedure when tests show want of uniformity.
11. Procedure on report.
12. Report of Testing Officer.
13. Fee for testing.
14. When a ship carrying petroleum may anchor at ordinary anchorage.
15. Exception in respect of petroleum declared dangerous which is not in excess of forty gallons.
16. When a ship carrying petroleum must anchor at a special anchorage.
17. Petroleum referred to in rule 16 not to be landed until it has been tested.
18. Landing of petroleum in anticipation of the testing officer's report.
19. Landing of petroleum in bulk.
20. Landing of petroleum otherwise than in bulk.
21. Transhipment of petroleum.
22. Import licenses how obtainable.
23. Petroleum comprised in ship's stores.
24. Petroleum having a flashing point above 150°.

FORMS.

GENERAL DEPARTMENT.

Bombay Castle, 18th May 1909.

No. 2572.—In exercise of the powers conferred by section 9 of the Indian Petroleum Act, 1899 (VIII of 1899), and in supersession of the previous rules on the subject, the Governor in Council, with the previous sanction of the Governor General in Council, is pleased to make the following rules for the importation, possession and transport of petroleum in the Bombay Presidency :—

RULES UNDER SECTION 9 OF THE INDIAN PETROLEUM ACT, 1899, FOR THE IMPORTATION, POSSESSION AND TRANSPORT OF PETROLEUM IN THE BOMBAY PRESIDENCY.

PART I.

PRELIMINARY.

Definitions. 1. In these rules,—

(*a*) "Part" means a part of these rules ;

(*b*) "certificated petroleum" means petroleum certified to be non-dangerous petroleum by a certificate of such description as the Governor in Council may, from time to time, by written order, prescribe, granted at the port of shipment ;

(*c*) "petroleum in bulk" means petroleum in quantities exceeding five hundred gallons, contained in any one receptacle ;

(*d*) "installation" means a place specially prepared for the storage of petroleum in bulk, or for bulk combined with non-bulk storage, and may be either a major or a minor installation ;

(*e*) "major installation" means an installation—

(1) capable of containing an amount of oil, whether in bulk only or in combined bulk, and non bulk storage, exceeding fifty thousand gallons, or

(2) in which tin-making operations are carried on ;

(*f*) "minor installation" means an installation—

(1) capable of containing an amount of oil, whether in bulk only or in combined bulk and non bulk storage, not exceeding fifty thousand gallons, and

(2) in which no tin-making operations are carried on ;

(*g*) "storage shed" means a building used for the storage of petroleum otherwise than in bulk, and may or may not form part of an installation :

(*h*) "protected works" includes buildings in which persons dwell or assemble, docks, wharves, timber yards, other petroleum stores, and any other place not forming part of an installation which the Governor in Council may by notification declare as such ;

(*i*) "testing officer" means the testing officer appointed by the Governor in Council under section 10 of the Act for any port at which petroleum may be imported under these rules ;

(*j*) "motor-vehicle" means any vehicle or vessel propelled by a motor, in which petroleum is used as fuel ; and

(*k*) "owner," as applied to a motor-vehicle, includes a person who hires, or is otherwise entitled for the time being to use or work, a motor-vehicle.

PART II.

POSSESSION AND TRANSPORT OF PETROLEUM.

CHAPTER I.—Possession of Petroleum.

Smoking prohibited.

1. No smoking shall be permitted inside any installation or storage shed.

Supervision of operations within installation or storage shed.

2. All operations within any installation or storage shed shall be conducted under the supervision of a responsible agent or supervisor.

Cleanlines of installation.

3. The ground in the insterior of an installation shall be kept clean and free from goods of a combustible nature, vegetation and rubbish.

Supply of sand or dry earth in installation.

4. A supply of sand or dry earth shall always be kept in an installation for the purpose of extinguishing fire.

Marking of capacity of tanks.

5. The capacity in gallons of every tank in an installation shall be conspicuously marked on it and shall be calculated at the rate of 6·25 gallons per cubic foot.

Protection from lightning.

6. Every tank or other receptacle for the storage of petroleum in bulk except a tank or receptacle which is not of sufficient capacity to contain ten thousand gallons of petroleum and which is so situated as not to be liable to cause danger in the event of the petroleum being ignited, shall be protected by an efficient lightning-conductor.

Explanation.—A tank or receptacle shall be deemed to be so situated as not to be liable to cause danger in the event of the petroleum being ignited, if it is not in close proximity to any other tank or receptacle, or to any building not forming part of the installation, and if it is surrounded by a wall, or embankment, or sunk in an excavation, the enclosure thus formed being sufficient to contain the whole contents of the tank or receptacle.

Testing of lightning-conductor by licensee.

7. Not less than once in every year the licensee of an installation shall test or cause to be tested the efficiency of the conductor in such manner as the Chief Inspector of Explosives may, by general or special order, declare to be sufficient, and a certificate showing the date of the last test shall be posted in a conspicuous place within the installation.

Official testing of lightning-conductor.

8. Any officer appointed by the Governor in Council in this behalf may enter any installation for the purpose of testing the efficiency of the conductor, at any time after sunrise and before sunset.

Time for work in installations or storage sheds.

9. No installation or storage shed shall be open, and no work in any installation or storage shed shall be permitted, between sunset and sunrise. provided that in cases where electric lightning is exclusively used, night working may be permitted by the Governor in Council on the recommendation of the Chief Inspector of Explosives.

Closure of pipes and openings.

10. Where there are any pipes or openings for draining out water in any enclosure wall, arrangements shall be made whereby they can be closed, and they shall only be kept open when actually necessary for drainage purposes. The nature of such arrangements shall be shown in the specifications which are required under rule 10 of Chapter IV of this Part, to be submitted with the application for a license.

Material for storage sheds.

11. All storage sheds in an installation shall be built of uninflammable material.

Posting up of rules and conditions.

12. There shall be hung up in a conspicuous place in every installation and storage shed for which a license has been granted, copies, in English and the vernacular, of the rules contained in this Chapter, and of the conditions endorsed on the license.

CHAPTER II.—Transport of Petroleum.

Conditions of carriage of petroleum in bulk by water.

1. Petroleum in bulk shall not be carried by water except on a ship certified as suitable for the carriage of petroleum in bulk by an officer appointed by the Governor in Council in this behalf, and the petroleum shall be stowed in such part of the ship and in such manner as may be approved, by general or special order, by the authority so appointed.

Petroleum in bulk on barges or flats.

2. Petroleum in bulk shall not except with the sanction of the Governor in Council be transported on any barge or flat which is not towed by a steamer or motor tug.

Inflammable cargo, or passengers.

3. No ship shall carry petroleum in bulk which carries at the same time passengers, or any inflammable cargo, other than petroleum and its products.

Towage of barge or flat carrying petroleum.

4. No steamer carrying inflammable cargo other than petroleum and its products shall tow a barge or flat carrying petroleum in bulk.

Towage of additional barge or flat carrying inflammable cargo.

5. No steamer towing a barge or flat carrying petroleum in bulk shall at the same time tow any other barge or flat carrying inflammable cargo other than petroleum and its products.

Exemption of petroleum having a flashing point above 150°.

6. Rules 4 and 5 of this Chapter shall not apply when the petroleum carried in bulk has a flashing point above 150° Fahrenheit.

Cleaning of compartments.

7. When any ship has discharged petroleum in bulk, the oil compartments shall be thoroughly cleaned and freed from petroleum and petroleum vapour before any other cargo or passengers are taken on board.

Hatches to be kept closed.

8. The hatches of oil tanks in all ships certified under rule 1 of this Chapter as suitable for the carriage of petroleum in bulk, and the man-holes in the hatches, shall be kept closed (except in so far as it may be necessary to open them to take on board or discharge petroleum or to clean tanks), so long as there is petroleum in the tanks, and until the tanks have been thoroughly cleaned and freed from petroleum and petroleum vapour.

Loading and discharge.

9. No petroleum in bulk shall be taken on board or discharged from any ship certified as suitable for the carriage of petroleum in bulk except through a suitable pipe prepared for the purpose.

Naked lights, fire or smoking prohibited.

10. No fire, naked lights or smoking shall be allowed on board any flat or barge carrying petroleum in bulk.

Flag to be carried.

11. The person in charge of any flat or barge carrying petroleum in bulk shall, from sunrise to sunset, show at its stern a conspicuous red flag having the words "Petroleum Boat" marked on it in black letters.

Loading and unloading by night.

12. No petroleum in bulk shall be loaded on or unloaded from any ship between sunset and sunrise, except when electric light is exclusively used.

Validity of license granted in another province.

13. Petroleum may be transported into and within the Bombay Presidency under cover of a license granted by the prescribed authority in any other Province of British India or in any area outside British India to which the Indian Petroleum Act, 1899, may be applied, provided that the conditions of such license are observed throughout the period during which the petroleum is in transit.

Transport by sea of petroleum which has not been tested.

14. Petroleum which has been imported into any port specified in rule 1 of Part III, and which has not been tested at the port of import in accordance with the rules contained in that Part, shall not be transported to any other port in British India save one specified in rule 1 of Part III, and the provisions of all the rules of that Part, except rule 22, shall be deemed to apply to such petroleum when it arrives at such other port.

Transport by sea of petroleum which has been tested.

15. Petroleum which has been tested at any port in British India may be transported to any other port in British India, and the provisions of rules 2, 3, 4, 14 (except the proviso), 16, 19 and 20 of Part III shall apply to such petroleum when it arrivesat such other port.

CHAPTER III.—General Provisions relating to Licenses.

Applications for licenses.

1. All applications for licenses except those referred to in rules 13 and 14 of Chapter IV of this Part for the possession or transport of petroleum shall be made as follows :—

Nature of license.	Place.	Authority.
(1) For the possession or transport of dangerous petroleum in quantities exceeding 40 gallons.	(1) City of Bombay. (2) Aden ... (3) Elsewhere ...	(1) Commissioner of Police. (2) The Resident. (3) The District Magistrate.
(2) For the possession of dangerous petroleum in quantities not exceeding 40 gallons. (3) For the possession of non-dangerous petroleum, not being petroleum in bulk. (4) For the possession of non-dangerous petroleum in an installation.	(1) City of Bombay. (2) Aden ... (3) Elsewhere ...	(1) The Municipal Commissioner or in the case of licenses under rule 9, Chapter IV, Part II, the Commissioner of Police or Deputy Commissioner of Police. (2) The Resident. (3) The District Magistrate.
(5) For the transport of dangerous petroleum in quantities not exceeding 40 gallons. (6) For the transport of petroleum, not being dangerous petroleum.	(1) City of Bombay. (2) Aden ... (3) Elsewhere ...	(1) The Commissioner of Police or Deputy Commissioner of Police. (2) The Resident. (3) The District Magistrate.

Licensing authorities.

2. Licenses of the nature specified below may be granted by the following authorities in the following places :—

Nature of license.	Place.	Authority.
(1) For the possession of dangerous petroleum in quantities not exceedidg 40 gallons.	(1) City of Bombay...	(1) The Municipal Commissioner or in the case of licenses under rule 9, Chapter IV, Part II, the Commissioner of Police or Deputy Commissioner of Police.
(2) For the possession of non-dangerous petroleum not being petroleum in bulk.		
(3) For the possession of non-dangerous petroleum in a minor installation.	(2) Aden ...	(2) The Resident.
	(3) Elsewhere ...	(3) The District Magistrate.
(4) For the transport of dangerous petroleum, in quantities not exceeding 40 gallons.	(1) City of Bombay...	(1) The Commissioner of Poliec or Deputy Commissioner of Police.
(5) For the transport of petroleum, not being dangerous petroleum otherwise than by a pipe line.	(2) Aden ...	(2) The Resident.
	(3) Elsewhere ...	(3) The District Magistrate.

In all other cases, except as provided in rule 14 of Chapter IV of this Part, the licensing authority shall be the Governor in Council :

Provided that in the case of renewals of existing licenses the Governor in Council may delegate his powers under this rule to the District Magistrate or to such other authority as the Governor in Council may from time to time by an order in writing appoint in this behalf.

Refusal of license.

3. The licensing authority may, for reasons to be communicated to the applicant, refuse a license in any case :

Provided that the licensing authority shall not refuse a license for the possession of petroleum in a minor installation, unless such authority has first made a reference to the Chief Inspecter of Explosives and obtained his concurrence.

Forfeiture of license.

4. Every license granted under these rules shall be liable to be forfeited for any contravention of the Act, or of any rule thereunder, or of any condition contained in such license, or for any other reason deemed by the licensing authority to be good and sufficient, and recorded by him in writing.

Particulars of license.

5. Every license and pass granted under these rules shall be held subject to the conditions endorsed on it, and shall contain all the particulars which are contained in the form prescribed for it by these rules :

Provided that in the case of installations and storage sheds in existence before these rules were made, the license may contain in lieu of the particulars contained in the form prescribed for it by these rules, either such particulars as may have been entered in the license granted for such installation or storage shed under the rules heretofore in force, or such particulars as may in each case be approved by the Chief Inspector of Explosives :

"Provided also that in the case of installations or storage sheds intended for the storage of petroleum which has a flashing point above 150° F., the license may contain, in lieu of the conditions endorsed on the form prescribed for it by these rules, such conditions as may in each case be approved by the licensing authority on the recommendation of the Chief Inspector of Explosives."

[Added by Bom. Gov. Notn., No. 3302, 14th July, 1910.]

Renewal of licenses.

6. (1) Every application for the renewal of a license shall be made in the same manner as an application for an original license.

(2) Every such application shall be made at a date not less than thirty days before the date on which the original license expires, and, if the application is so made, the premises shall be held to be duly licensed until such date as the licensing authority issues the renewed license or until an intimation that the renewal of the license is refused has been communicated to the applicant.

(3) The same fee shall be charged for the renewal of a license as for a new license.

Supply of rules to licensee.

7. When any license is granted for the possession or transport of petroleum, a copy of the rules contained in Chapter I of this Part in the case of a license for possession and in Chapter II of this part in the case of a license for transport, printed in English and the vernacular, shall be given, together with the license, to the licensee.

Procedure on death or disability of licensee.

8. Where a licensee dies or becomes insolvent or become mentally incapable or otherwise disabled, the person carrying on the business of such licensee shall not be liable to any penalty or forfeiture under the Act or these rules for acting under the license during such time as may reasonably be necessary to allow him to make an applica- for a new license in tion his own name for the unexpired portion of the original license.

Loss of license.

9. Where a license granted under these rules is lost or accidentally destroyed, a duplicate may be granted.

CHAPTER IV.—Licenses for the Possession of Petroleum.

Continuance of license.

1. Save as provided in rules 13 and 14 of this Chapter, every license for the possession of petroleum shall remain in force until the 31st of December next following the date of issue of the license.

Petroleum not in bulk, other than dangerous petroleum.

2. Licenses for the possession of petroleum, not being dangerous petroleum, otherwise than in bulk, may be granted in Form A.

Dangerous petroleum not in bulk.

3. Licenses for the possession of dangerous petroleum, not in bulk, in quantity exceeding forty gallons may be granted in Form B.

Dangerous petroleum not exceeding forty gallons.

4. Licenses for the possession of dangerous petroleum in quantity not exceeding forty gallons may be granted in Form C.

Transfer of certain licenses.

5. (1) The holder of a license in Forms A, B or C, may, at anytime before the expiry of the license, apply for permission to transfer his license to another person.

(2) Such application shall be made to the District Magistrate, or the officer to whom the original application for license was made, who shall, if he approves of the transfer, enter upon the license, under his signature, an endorsement to the effect that the license has been transferred to the person named.

(3) A fee of Re. 1 shall be charged on each such application.

(4) The person to whom the license is so transferred shall enjoy the same powers and be subject to the same obligations under the license as the original holder.

Possession of dangerous petroleum in receptacles containing more than forty gallons each.

6. Special licenses for the possession of dangerous petroleum in receptacles containing more than forty-gallons, but not more than 500 gallons each, may be granted on such terms as the Governor in Council may prescribe on the recommendation of the Chief Inspector of Explosives.

Storage in major installations.

7. Licenses for the possession of any stated quantity of petroleum, not being dangerous petroleum, in major installations, in accordance with such specifications and plans as the Governor in Council, on the recommendation of the Chief Inspector of Explosives, may, from time to time, by general or special order, approve, may be granted in Form D.

Storage in minor installations.

8. Licenses for the possession of any stated quantity of petroleum, not being dangerous petroleum, in minor installations, in accordance with such specifications and plans as the Chief Inspector of Explosives may, from time to time, by general or special order, approve, may be granted in Form E.

Dangerous petroleum for use on motor vehicles.

9. (1) Licenses in Form F may be granted free of charge for the possession of dangerous petroleum for use on motor-vehicles and for its transport thereon, for the purpose of use therein.

(2) The provisions of the ordinary rules relating to the possession of dangerous petroleum shall regulate the possession of dangerous petroleum for use on motor-vehicles, save in so far as these provisions are varied by the conditions of the license.

Particulars to be given in applications for licenses for the possession of petroleum other than licenses under rules 4 and 9.

10. Every application for a license for the possession of petroleum, other than licenses under rules 4 and 9 of this Chapter, shall specify :—

(a) the description and quantity of petroleum which the applicant desires to keep.

(b) the name and position of the premises intended to be used for the storage of such petroleum, and whether the said premises fulfil the conditions prescribed by Form A, Form B, Form D, or Form E, as the case may be,

(c) the amount of petroleum, if any, already licensed to be kept on the same premises.

If the application be made for the first time in respect of any major or minor installation or if the quantity of petroleum to be stored in such an installation is to be increased, the application shall be accompanied by specifications and plans drawn to scale.

Certificate of safety to be furnished.

11. Before petroleum is stored in any major or minor installation for which a license has been granted for the first time, a certificate shall be furnished to the licensing authority to the effect that all enclosure walls and embankments required to be constructed under the conditions of the license are sufficient to ensure safety. The certificate shall be signed by an engineer accepted as qualified for the purpose by the licensing authority. When the license is not granted for the first time but is granted for an increased quantity of petroleum, a certificate shall similarly be furnished to the licensing authority before any quantity of petroleum exceeding the amount which was admissible under the former license is stored in the installation.

Particulars to be given in applications for licenses under rules 4 and 9.

12. Every application for a license under rules 4 and 9 of this Chapter shall specify :—

(a) whether the applicant is the owner of a motor-vehicle,

(b) the amount of dangerous petroleum the applicant desires to store,

(c) the exact position and nature of the premises intended to be used for the storage of such dangerous petroleum, and whether the said premises fulfil the conditions prescribed by Form C or Form F. as the case may be.

Storage by port authorities.

13. Licenses for the possession of petroleum in an installation or storage shed may be granted by the Governor in Council free of charge to the Trustees of the Port of Bombay or of the Port of Karachi subject to such conditions, and for such period, as the Governor in Council may direct.

Storage in an installation or storage shed erected on land belonging to port authorities.

14. Licenses for the possession of petroleum in an installation or storage shed erected on land belonging to the Trustees of the Port of Bombay or of the Port of Karachi may, with the previous sanction of the Governor in Council, be granted free of charge by the Trustees of the Port of Bombay or of the Port of Karachi subject to such conditions, and for such period, as the Trustees of the Port of Bombay or of the Port of Karachi may direct.

CHAPTER V.—*Licenses for the transport of petroleum.*

General licenses for the transport of non-dangerous petroleum.

1. General licenses for the transport of petroleum, other than dangerous petroleum, may be granted for a period of twelve months in Form G.

General licenses for the transport of dangerous petroleum

2. General licenses for the transport of dangerous petroleum otherwise than in bulk may be granted for a period of twelve months in Form II.

Effect of general license.

3. Licenses granted under rules 1, 2 and 9 of this Chapter may authorise the holders to transport petroleum without restriction as to destination or total quantity.

Pass for transport of petroleum.

4. The holder of a general license granted under rules 1, 2 or 9 of this Chapter shall, with each consignment of petroleum conveyed under cover of his license, issue to the person who takes charge of the petroleum for the purpose of transporting it, a numbered pass in Form I.

Special licenses for the transport of petroleum other than dangerous petroleum.

5. Special licenses may be granted for the transport of petroleum, other than dangerous petroleum, in quantities exceeding five hundred gallons, in Form J.

Special licenses for the transport of dangerous petroleum.

6. Special licenses may be granted for the transport of dangerous petroleum other than in bulk in Form K.

Effect of special license.

7. A special license granted under rules 5 and 6 shall only cover the transport of the particular consignment entered in the license, and shall be valid for such period as may be entered in it.

Particulars to be given in applications for special licenses.

8. Applications for special licenses for the transport of petroleum by rail, by road, by steamer, or by barge, or by two or more of these modes of conveyance, shall specify the description and quantity of petroleum to be transported, and the places from and to which, respectively, the petroleum is to be conveyed, and shall describe the receptacles in which it is to be contained, or, in the case of petroleum to be transported in bulk by water, shall state that the ship in which it is to be carried has been certified as required by rule 1 of Chapter II of this Part.

Transport of dangerous petroleum by motorists otherwise than on a motor-vehicle.

9. General licenses in Form L to transport dangerous petroleum, up to a maximum of sixty gallons at a time, otherwise than on a motor-vehicle, may be granted for a period of twelve months to owners of motor-vehicles holding licenses under rule 9, sub-rule (1), of Chapter IV of this Part, to possess petroleum and use or transport it on a motor-vehicle.

CHAPTER VI.—Fees.

Method of levying fees.

1. (1) Where the proceeds of fees leviable for licenses under these rules have been assigned by the Governor in Council to any local authority, the fees shall be levied in such manner as the local authority may from time to time direct.

(2) In all other cases the fees shall be paid in cash on receipt of a notice from the licensing authority that a license will be granted.

(3) The court fee stamp of the value of eight annas representing the fee chargeable under schedule II, Article I (*b*), of the Court Fees Act on an application for a license presented to a Magistrate should be attached to the application.

Fees for licenses for possession of petroleum.

2. The following fees shall be charged for licenses for the possession of petroleum, namely :—

Non-dangerous petroleum.

	Rs.	
(*a*) When the quantity to be stored exceeds five hundred, but does not exceed one thousand gallons.	12	
(*b*) When the quantity to be stored exceeds one thousand, but does not exceed five thousand gallons.	12	for the first one thousand gallons *plus* Rs. 2 for every additional one thousand gallons or part thereof.

(*c*) When the quantity to be stored exceeds five thousand gallons, but does not exceed fifty thousand gallons.	20	for the first five thousand gallons *plus* Rs. 4 for every additional one thousand gallons or part thereof.
(*d*) When the quantity to be stored exceeds fifty thousand gallons.	250	

Dangerous petroleum.

	Rs.
(*e*) When the quantity to be stored does not exceed forty gallons.	3
(*f*) When the quantity to be stored exceeds forty gallons, but does not exceed five hundred gallons.	8
(*g*) When the quantity to be stored exceeds five hundred gallons.	the same fees as those laid down for non-dangerous petroleum.

Fees for licenses for transport of petroleum.

3. The following fees shall be charged for licenses for the transport of petroleum :—

Non-dangerous petroleum.

	Rs.
Special license—	
(*a*) When the quantity to be transported exceeds five hundred but does not exceed five thousand gallons.	1
(*b*) For every additional five thousand gallons or part of five thousand gallons.	1
General license for the transport of non-dangerous petroleum by rail, by road, or by water for twelve months.	100

Dangerous petroleum.

	Rs.	
Special license—		
(*i*) When the quantity to be transported does not exceed forty gallons.	2	
(*ii*) When the quantity to be transported exceeds forty gallons but does not exceed four hundred and eighty gallons.	2	for the first 40 gallons *plus* 8 annas for every additional forty gallons or part thereof.
(*iii*) When the quantity to be transported exceeds four hundred and eighty gallons.	8	for the first four hundred and eighty gallons *plus* Rs. 2 for every additional four hundred and eighty gallons or part thereof.
General license for the transport of dangerous petroleum by the owner of a motor-vehicle by road, rail or water, up to a maximum of sixty gallons at a time.	5	
General license for the transport of dangerous petroleum by dealers by rail, road or water.	50	

Fee for license granted for unexpired portion of an original license.

4. A fee of one rupee shall be charged for a new license for the unexpired portion of an original license granted to any person applying for the same in accordance with the provisions of rule 8 of Chapter III of this Part.

Fee for duplicate licenses.

5. A fee of eight annas shall be charged for a duplicate of a license granted in accordance with the provisions of rule 9 of Chapter III of this Part.

PART III.*

OF IMPORTATION OF PETROLEUM.

Ports of Bombay, Karachi and Aden.

1. The ports mentioned in the margin are hereby declared to be the only ports at which petroleum may be imported.

Declaration by master of ship carrying petroleum or by the ship's agent.

At Bombay—The Sunk Rock Light house.

At Karachi—The No. 2 Deep water Point moorings.

At Aden—Such point as shall be fixed on this behalf by the Resident.

†2. The master of every ship carrying petroleum shall deliver to the pilot before entering any of the ports mentioned in rule 1 and on reaching the points specified in the margin, a written declaration under his signature stating—

(*a*) what quantity of petroleum the ship is carrying ;

(*b*) whether any and, if so, what part of it is dangerous petroleum ;

(*c*) whether any and, if so, what part of it is certificated petroleum ;

(*d*) whether any, and if so, what part of it is petroleum having a flashing point above 150° of Fahrenheit's thermometer ; and

(*e*) what quantity of petroleum (specifying whether any, and if so, what part of it belongs to each of the classes (*b*), (*c*) and (*d*), it is intended to land at that port or at any other port in British India :

Provided that, if, in anticipation of a ship's arrival, the agent for such ship delivers to the Port-officer a written declaration as aforesaid under his signature, no such declaration shall be necessary by the master of the ship.

Delivery of certificate.

3. If the master or agent declares that any petroleum is certificated petroleum, which it is intended to land at that port or at any other port in British India, he shall deliver to the pilot or Port-officer, as the case may be, along with his declaration, the certificate relating to such petroleum.

In the foot-note to rule 2 of Part III of the said rules, for the words "the Morbut Light Vessel †" the words "a red light buoy showing *by night* two red lights 6 feet apart" shall be substituted. [See Bom. Govt. Notn. No. 103, 10th Jan. 1910.]

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* *Note.*—The rules in this Part shall, in their application to the port of Aden, be read, subject to the modifications indicated in the foot-notes.

† In Aden, (*a*) for the words "before entering any of the ports mentioned in the rule 1," *substitute* the following, namely :—"before his vessel crosses a straight line passing through the Signal Flag.—Staff and the Morbut Light Vessel" ; and (*b*) *add* the following to the rule :—"No vessel carrying petroleum shall be permitted to enter the Inner Harbour unless sanction be obtained from the Port-officer."

Certificate and declaration to be forwarded to Chief Customs-officer.

*4. Every certificate and declaration delivered to a pilot under rules 2 and 3 shall be made over by him without delay to the Port-officer, and all certificates and declarations received by the Port-officer shall, with all convenient despatch, be forwarded by him to the Chief Customs-officer.

Delivery of samples.

†5. (1) When the master of, or the agent for, a ship has made the declaration required by rule 2, the Chief Customs-officer shall direct an officer to go on board the vessel and obtain samples of all the petroleum on board, which it is intended to land at that port. If the importer so desires, he shall also take samples of all the petroleum on board which it is intended to land at any other port in British India.

(2) The master shall deliver to the officer aforesaid, without charge, samples of every variety of petroleum comprised in the petroleum of which samples are to be taken under clause (1). Such samples shall, if such officer so require, be taken from the particular receptacles indicated by him and under his personal superintendence, and shall not exceed forty fluid ounces:

Provided that when the petroleum is in cases, samples may be taken as delivery proceeds.

Selection of samples.

6. The minimum number of samples to be selected of each brand or quality contained in the cargo shall be as follows:—

(*a*) of certificated petroleum in cases—

one sample for every fifteen thousand cases or fraction of fifteen thousand cases;

(*b*) of certificated petroleum in casks or drums declared to be of uniform quality—
one sample for every one hundred and twenty thousand gallons or part of one hundred and twenty thousand gallons;

(*c*) of certificated petroleum in bulk or in tanks.

one sample from each group of tanks or tank compartments certified to be of the same brand or quality;

(*d*) of petroleum other than certificated, in cases—

one sample for every ten thousand cases or fraction of ten thousand cases;

(*e*) of petroleum other than certificated, in casks or drums declared to be of uniform quality—

one sample for every eighty thousand gallons or part of eighty thousand gallons;

(*f*) of petroleum other than certificated, in bulk or in tanks—

one sample from each tank or tank compartment.

Sealing of samples and forwarding the same to testing officer.

7. When the samples required have been delivered to the officer aforsaid, such officer shall forthwith seal the bottles containing the samples, and shall label them with the name of the ship, the name of the consignee, and such other distinguishing marks as may be necessary. He shall then forward them to the testing officer.

Methods of test.

8. The testing officer shall test the samples thus received in the manner laid down in the first Schedule to the Act.

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* In Aden, *for* "Chief Customs-officer" *substitute* "Collector of Abkari."

† In Aden, for the words "Chief Customs-officer shall direct an officer" *substitute* the words "Inspector of Abkari under the orders of the Collector of Abkari will arrange with the testing officer."

*9. If more than one sample of any one brand or quality forming the cargo or a portion of the cargo of a ship is sent to the testing officer for report, that officer shall test each sample separately and strike an average of the results. If the average flashing-point is not lower than 73° of Fahrenheit's thermometer, and no one test gives a flashing-point below 70° of that thermometer, he shall report the whole of the petroleum represented by the samples to the Chief Customs-officer as non-dangerous.

Averaging results of tests.

Procedure when tests show want of uniformity.

*10. If the testing officer, after testing samples, considers further tests necessary to satisfy him that none of the petroleum is dangerous, he shall report to the Chief Customs-officer accordingly.

Procedure on report.

*11. On receipt of a report under rule 10—

(a) when the consignment is imported in cases, the Chief Customs-officer shall cause the petroleum in question to be landed and stacked in lots of one thousand cases each, or to be discharged into boats each containing five hundred cases; and the officer referred to in rule 5 shall select and deliver, to the testing officer one sample from each lot;

(b) when the consignment is imported in bulk, the Chief Customs-officer shall forward a second sample and, until receipt of the testing officer's further report, may prevent the landing of any portion of the contents of the tank in question or may permit it to be landed as provided in rule 18;

(c) if the petroleum has been already landed and stored under rule 18, it shall be divided into lots and samples of each lot shall be selected as aforesaid.

Report of testing officer.

*12. The testing officer shall, as soon as practicable, and ordinarily within twenty-four hours after receipt of any samples, sign a report certifying that they are, or are not, dangerous petroleum, as the case may be, and shall forward such report to the office of the Chief Customs-officer, where it shall be deposited.

Fee for testing.

13. The fee for testing each sample shall be five rupees:

Provided that the total amount of the fees chargeable under this rule shall not, in the case of any one ship, exceed Rs. 50.

When a ship carrying petroleum may anchor at ordinary anchorage.

14. A ship may proceed to the usual anchorage in any port specified in rule 1 and there discharge any certificated petroleum not exceeding five thousand gallons in quantity:

Provided that the officer whose duty it is, under rule 5, to select samples of petroleum on board, may at any time take a sample of any such petroleum for the purpose of having it tested.

Exception in respect of petroleum declared dangerous which is not in excess of forty gallons.

15. If the quantity of petroleum declared dangerous on board a ship does not exceed forty gallons and there is no other petroleum on board, or the aggregate quantity of petroleum on board, including petroleum declared dangerous, does not exceed forty gallons, the said petroleum may be forthwith landed.

When a ship carrying petroleum must anchor at a special anchorage.

16. Save as provided in rules 14 and 24, every ship having petroleum on board shall be anchored at such anchorage as the conservator of the Port † shall appoint in this behalf, and shall not, except for the purpose of discharge of bulk-oil petroleum as laid down in rule 19, leave such anchorage until so much of the petroleum as it is intended to land at that port has been discharged.

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* In Aden, for "Chief Customs-office" *substitute* "Collector of Abkari."

† For the words "Chief Customs-office" *read* Conservator of the Port (see Bom. Govt. Notn. No. 4602, 1st Sept. 1909).

Such anchorage shall in no case be the same as that for vessels laden with explosives, and shall be sufficiently far removed from the anchorage for vessels laden with explosives to prevent the possibility of a fire originating at the former place affecting vessels anchored at the latter.

Petroleum referred to in rule 16 not to be landed until it has been tested.

*17. Save as provided in rule 18, no petroleum shall be landed from any ship referred to in rule 16 until the testing officer's report in respect thereof has been received in the office of the Chief Customs-officer.

Landing of petroleum in anticipation of the testing officer's report.

*18. (1) The Chief Customs-officer may, in anticipation of the testing officer's report, allow the consignee of any petroleum to discharge the same into boats or to land it.

(2) Such permission shall be subject to the condition that the boats into which the petroleum is discharged shall remain at such place as may be directed by the Chief Customs-officer, or that the petroleum shall be landed at a landing place duly appointed for this purpose by the aforesaid officer, and be stored in an installation licensed under rule 13 or 14 of Chapter IV, Part II.

Landing of petroleum in bulk.

19. When petroleum is imported in bulk, its removal from the ship shall be effected by means of a hose and a metal pipe, and it shall be pumped into storage tanks. The discharge shall be continuous, day and night, until completed, weather and appliances permitting. When working at night, electric light only shall be used ; and, when the ship has finished discharging, the pipe to the storage-tanks shall immediately be emptied by means of a supplementary pump on shore. If for any cause the discharge of petroleum is at any time suspended, arrangements must be made by means of a valve for effectually preventing any of the oil left in the pipe from escaping.

Landing of petroleum otherwise than in bulk.

†20. When petroleum imported otherwise than in bulk is landed within the port—

(1) it shall be landed either at jetties provided for the purpose, or in cargo-boats, and, except where electric light is exclusively used, only after sunrise and before sunset, and only at such place or places as the Chief Customs-officer shall direct ;

(2) dangerous and non-dangerous petroleum shall not be conveyed to the shore at the same time on the same cargo-boat ;

(3) no smoking, fire or light of any description (other than lights required by the port or harbour rules), shall be allowed in any cargo-boat during the time that the petroleum is on board the boat.

Transhipment of petroleum.

21. Petroleum may be transhipped from one ship to another for conveyance to any other port, whether within or beyond the limits of British India :

Provided that—

(*a*) the petroleum shall not be transhipped between sunset and sunrise, except when electric light is exclusively used,

(*b*) dangerous and non-dangerous petroleum shall not be conveyed at the same time on any boat which is used for transhipping the petroleum, and

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* In Aden, for "Chief Customs-officer" *substitute* "Collector of Abkari."

† In Aden, for clause (1) *substitute* the following.—" It shall be landed only in cargo-boats, and after sunrise and before sunset, and only at the following places :

Port Trust at Maala—for non-dangerous petroleum.

Obstruction Pier near Barrier Gate—for dangerous petroleum (*substituted* by Bom. Govt. Notn. No. 103, 10th June 1910).

(c) no smoking, fire or light of any description (other than lights required by the port or harbour rules), shall be allowed on any boat which is being used for transhipping the petroleum from the one ship to the other.

Import-licenses how obtainable.

22. (1) Applications for import-licenses under section 5 of the Act shall be submitted in Bombay to the Commissioner of Police, in Aden to the Resident, and in Karachi to the Collector of Customs, Karachi, in this behalf, who will, after enquiry, forward the same with his opinion to the Governor in Council.

(2) If the application is granted, a license in Form M, signed by a Secretary to Government, shall be forwarded to the applicant through the officer to whom his application was submitted. The license may be granted for a period of twelve months.

Petroleum comprised in ship's stores.

*23. Nothing in the foregoing rules in this Part applies to petroleum, other than dangerous petroleum, comprised in a ship's stores and manifested as such, provided it is not of unreasonably large amount. If any question arises as to whether any petroleum manifested as ship's stores is of an unreasonably large amount, the decision thereon of the Chief Customs-officer shall be final.

Petroleum having a flashing point above 150°.

*24. Nothing in the foregoing rules in this Part appliee to petroleum which has a flashing point above 150° of Fahrenheit's thermometer. If the master of, or agent for, a ship certifies in writing that any petroleum on board is of this description, the Chief Customs-officer shall allow it to be discharged in the same manner as ordinary cargo ; but the Commissioner of Police or District Magistrate, as the case may be, may at any time require a sample of any portion of it to be delivered to him, with a view to having it tested.

FORM A.

(RULE 2 OF CHAPTER IV OF PART II.)

License to possess petroleum (other lhan dangerous petroleum), otherwise than in bulk.

No. Fee Rs.

LICENSE is hereby granted to for the storage, in the storage shed described below, of gallons of petroleum, subject to the rules for the storage of petroleum published in Notification No. 2572, dated 18th May 1909, and to the further conditions on the back of this license.

District Magistrate or authority appointed under rule 2 of Chapter III of Part II.

The *190* .

[Description of the storage shed above referred to.]

ENDORSEMENT ON FORM A.

Conditions of the License.

1. If the licensing officer call on the holder of a license, by a notice in writing, to execute any repairs of the storage shed, which may, in the opinion of such officer, be necessary for the safety of the shed, the holder of the license shall execute the repairs within such period, not being less than one month from the date of receipt of the notice, as may be fixed by the notice.

* In Aden, for "Chief Customs-officer" *substitute* "Collector of Abkari."

2. The storage shed shall be constructed of masonry or other uninflammable material with terraced, tiled or iron roofs and with tiled or paved or earthen floors, but the beams, rafters, columns, windows and doors may be of wood.

3. Either the doorways and other openings of the storage shed shall be built up to a height of two feet above the level of the road or street, or the floor sunk to a depth of two feet below the level of the road or street, so that the petroleum cannot flow out from the building in case of its escape from the receptacle in which it is contained, or the building itself shall be surrounded with a masonry wall or embankment or both not less than two feet high. When the quantity of petroleum stored exceeds 16,000 gallons the height or depth shall be three feet.

A combination of these methods is permissible.

4. The following distances shall be kept clear round the building :—

Distances to be kept clear round buildings or enclosure walls.	Number of gallons to be stored.
None	5,000 and under.
20 feet	Over 5,000 and up to 50,000.
30 „	Unlimited.

5. No light, except a light of such strength, position and character as is not liable to ignite any inflammable vapour, nor fire of any description, shall be permitted within the storage shed.

FORM B.

(RULE 3 OF CHAPTER IV OF PART II.)

License to possess dangerous petroleum, otherwise than in bulk, in quantity exceeding forty gallons.

No. Fee Rs.

LICENSE is hereby granted to for the storage, in the storage shed described below, of gallons of dangerous petroleum, subject to the rules for storage of petroleum published in Notification No. 2572, dated 18th May 1909, and to the further conditions on the back of this license.

Secretary to the Government of Bombay.

The 190 .

[Description of the storage shed above referred to.]

ENDORSEMENT ON FORM B.

Conditions of License.

1. If the licensing officer call upon the holder of a license, by notice in writing, to execute any repairs of the storage shed, which may, in the opinion of such officer, be necessary for the safety of the shed, the holder of the license shall execute the repairs within such period, not being less than one month from the date of receipt of the notice, as may be fixed by the notice.

2. The license-holder is prohibited from delivering any quantity of dangerous petroleum exceeding three gallons to any one who has not a license under section 5 or 6 of the Act or any less quantity of such petroleum, except in accordance with the conditions of the proviso to section 6 of the Act, as to the vessels in which the petroleum must be contained.

3. The petroleum shall be stored in gas-tight tinned or galvanized sheet iron, steel or lead plate receptacles containing each not more than forty gallons and fitted with well-made filling holes and well-fitting screw plugs or fitted with screw cap or

other cap with metal air-tight under-cap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch: provided that wood cases shall not be necessary when the receptacles are made of tinned or galvanized sheet-iron or steel, and have the following thickness of metal.—

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 gallons but does not exceed 4 gallons	22 B. W. G.
(3) When the capacity exceeds 4 gallons but does not exceed 8 gallons	20 B. W. G.
(4) When the capacity exceeds 8 gallons but does not exceed 20 gallons.	16 B. W. G.
(5) When the capacity exceeds 20 but does not exceed 30 gallons	14 B. W. G.
(6) When the capacity exceeds 30 but does not exceed 40 gallons	12 B. W. G.

4. An air-space of at least one-tenth of its capacity shall be left in each receptacle at the time of filling.

5. The receptacles shall be so substantially constructed and secured as not to be liable except, under circumstances of grave negligence or extraordinary accident, to be broken or become defective, leaky or insecure.

6. The receptacles shall be labelled in accordance with the provisions of section 7 of the Act.

7. Any receptacle, before being repaired, shall be cleared of all dangerous petroleum and of all dangerous vapours arising from the same.

8. The storage shed shall be constructed of masonry or other uninflammable material with terraced, tiled or iron roofs and with tiled or paved or earthen floors.

9. Either the doorways and other openings of the storage shall be built up to a height of two feet above the level of the road or street, or the floor sunk to a depth of two feet below the level of the road or street, so that the petroleum cannot flow out from the building in case of its escape from the receptacle in which it is contained, or the building itself shall be surrounded with a masonry wall or embankment or both not less than two feet high. When the quantity of petroleum stored exceeds 16,000 gallons, the height or depth shall be three feet.

A combination of these methods is permissible.

10. All ventilating openings in the storage shed shall be protected by strong wire-gauze.

11. No light, except a light of such strength, position and character as is not liable to ignite any inflammable vapour, nor fire of any description, shall be permitted at any time within the storage shed.

12. All due precautions shall be taken for the prevention of unauthorized persons having access to any dangerous petroleum kept and to the vessels containing or having actually contained the same.

13. Every person managing or employed on or in connection with the storage shed shall abstain from any act whatever which tends to cause fire or explosion and which is not reasonably necessary, and shall prevent any other person from doing such act.

14. The drum or other receptacle containing dangerous petroleum shall only be opened on the licensed premises at or immediately adjoining the storage shed, and for the time necessary for drawing off the petroleum, and during such drawing off every reasonable precaution shall be adopted for preventing the escape of dangerous petroleum or the vapour therefrom.

15. The following distances shall be kept clear from protected works round the storage shed :—

Quantity to be stored.	Distances to be kept clear.
Not exceeding 500 gallons ...	... ... 20 feet.
From 500 to 1,000 gallons ...	... ... 25 „
„ 1,000 to 5,000 „ ...	... ... 30 „
„ 5,000 to 15,000 „ ...	... ... 40 „
„ 15,000 to 25,000 „ ...	... ... 50 „
„ 25,000 to 35,000 „ ...	... ... 60 „
„ 35,000 to 50,000 „ ...	... ... 70 „
„ 50,000 and over „ ...	... ... 100 „

Provided that these distances may be reduced by the Governor in Council on the recommendation of the Chief Inspector of Explosives in cases where screen walls are provided, or other special precautions taken, or where there are special circumstances that in the opinion of the Chief Inspector of Explosives warrant the reduction.

16. Provided that when the quantity to be possessed does not exceed 60 gallons, the provisions of conditions 8, 9 and 15 shall not apply, but the licensee shall observe the following conditions :—

(i) The storage shed in which the dangerous petroleum is stored shall be well ventilated and constructed of uninflammable material, provided however that the doors and windows may be of wood.

(ii) Where a storage shed forms part of or is attached to another building and when the intervening floor or partition is of an unsubstantial or inflammable character or has openings therein, the whole of such building shall be deemed to be the storage shed and no portion of such storage shed shall be used as a dwelling house or as a place where persons assemble. The storage shed shall have a separate entrance from the open air distinct from any building or dwelling in which persons assemble.

17. The storage shed shall be liable to inspection by an officer not being of lower rank than a Sub-Inspector of Police or a European Police Sergeant * authorized by the Governor in Council in this behalf.

FORM C.

(RULE 4 OF CHAPTER IV OF PART II.)

License to possess dangerous petroleum in quantity not exceeding forty gallons.

No. Fee Rs. 3.

LICENSE is hereby granted to for the storage, in the storage shed described below, of gallons of dangerous petroleum, subject to the rules for the storage of petroleum published in Notification No. 2572, dated 18th May 1909 and to the further conditions on the back of this license.

District Magistrate or authority
appointed under rule 2 of Chapter III of Part II.

The *190* .

[Description of the storage shed above referred to.]

* Substituted for "an Inspector of Police," by Bom. Gov. Notn. No. 782, 14th Feb. 1910.

ENDORSEMENT ON FORM C.

Conditions of License.

1. If the licensing officer call upon the holder of a license, by notice in writing, to execute any repairs of the storage shed, which may, in the opinion of such officer, be necessary for the saftey of the shed, the holder of the license shall execute the repairs within such period, not being less than one month from the date of receipt of the notice, as may be fixed by the notice.

2. The license-holder is prohibited from delivering any quantity of dangerous petroleum exceeding three gallons to any one who has not a license under section 5 or section 6 of the Act, or any less quantity of such petroleum, except in accordance with the conditions of the proviso to section 6 of the Act, as to the vessels in which the petroleum must be contained.

3. The petroleum shall be stored in gas-tight tinned or galvanized sheet iron, steel or lead plate receptacles containing each not more than ten gallons and fitted with well-made filling holes and well-fitting screw plugs or fitted with screw cap or other cap with metal air-tight under-cap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch : provided that wood cases shall not be necessary when the receptacles are made of tinned or galvanized sheet-iron or steel, and have the following thickness of metal :—

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 gallons but does not exceed 4 gallons	22 B. W. G.
(3) When the capacity exceeds 4 gallons but does not exceed 8 gallons	20 B. W. G.
(4) When the capacity exceeds 8 gallons	16 B. W. G.

4. An air-space of at least one-tenth of its capacity shall be left in each receptacle at the time of filling.

5. Receptacles shall be so substantially constructed and secured as not to be liable, except under circumstances of grave negligence or extraordinary accident, to be broken or become defective, leaky or insecure.

6. The receptacles shall be labelled in accordance with the provisions of section 7 of the Act.

7. Any receptacle, before being repaired, shall be cleared of all dangerous petroleum and of all dangerous vapours arising from the same.

8. The storage shed in which the dangerous petroleum is stored shall be well ventilated and constructed of uninflammable material; provided, however, that the doors and windows may be of wood.

9. All ventilating openings in the storage shed shall be protected by strong wire-gauze.

10. No light, except a light of such strength, position and character as is not liable to ignite any inflammable vapour, nor fire of any description, shall be permitted at any time within the storage shed.

11. All due precautions shall be taken for the prevention of unauthorised persons, having access to any dangerous petroleum kept and to the vessels containing or having actually contained the same.

12. Every person managing or employed on or in connection with the storage shed shall abstain from any act whatever which tends to cause fire or explosion and which is not reasonably necessary and shall prevent any other person from doing such act.

13. The drum or other receptacle containing dangerous petroleum shall only be opened on the licensed premises at or immediately adjoining the storage shed, and for the time necssary for drawing off the petroleum and during such drawing off every reasonable precaution shall be adopted for preventing the escape of dangerous petroleum or the vapour therefrom.

14. Where a storage shed forms a part of or is attached to another building, and where the intervening floor or partition is of an unsubstantial or inflammable character or has openings therein, the whole of such building shall be deemed to be the storage shed and no portion of such storage shed shall be used as a dwelling or as a place where persons assemble. The storage shed shall have a separate entrance from the open air distinct from any building or dwelling in which persons assemble.

15. The storage shed shall be liable to inspection by an officer not being of lower rank than a Sub-Inspector of Police, or a European Police Sergeant * authorized by the Governor in Council in this behalf.

FORM D.

(RULE 7 OF CHAPTER IV OF PART II.)

License to possess petroleum not being dangerous petroleum, in a major installation.

No. Fee Rs.

LICENSE is hereby granted to for the storage, in the place described below, of gallons of petroleum, not being dangerous petroleum, subject to the rules for the storage of petroleum, published in Notification No. 2572, dated 18th May 1909, and to the further conditions on the back of this license.

Secretary to the Government of Bombay.

The 190 .

[Description of the place above referred to.]

ENDORSEMENT ON FORM D.

Conditions of License

1. Each tank shall either be separately surrounded by a wall or embankment of substantial construction, or shall be partially sunk in an excavation. The enclosure thus formed shall be of dimensions sufficient to contain 10 per cent. more oil than the tank is capable of containing, and shall be so constructed as to prevent the escape therefrom of any oil in the form of liquid, whether under the action of fire or otherwise. Settling or measuring tanks,† may be situated within the wall or excavation but otherwise the space enclosed by such wall or excavation, and not occupied by the tank, shall be kept entirely clear and unoccupied.

2. In the case of all storage shed, within the installation, either the doorway, and other openings of the building shall be built up to a height of three feet above the level of the ground outside it, or the floor shall be sunk to a depth of three feet below the level of the ground, or the building itself shall be surrounded with a masonry wall or embankment or both not less than three feet high.

3. The height of any storage tank shall not be more than three-fifths of its diameter.

4. A distance of not less than one hundred feet shall be kept clear between one storage tank and another, or between a storage tank and a storage shed, the distance being measured between the nearest points of the perimeters of the storage tanks or storage sheds, as the case may be.

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*Substituted for an "Inspector of Police" by Bom. Govt. Notn. No. 782, 14th Feb., 1910.

† These tanks shall not have a greater capacity than 30,000gallons.

5. A distance of not less than one hundred and fifty feet shall be kept clear between any storage tank or shed and any protected work.

6. The distances specified in conditions 4 and 5 may be reduced by the Governor in Council on the recommendation of the Chief Inspector of Explosives in cases when screen walls are provided, or other special precautions taken or where there are special circumstances that, in the opinion of the Chief Inspector of Explosives, warrant the reduction.

7. No fire or lights other than those necessary for soldering purposes shall be permitted within the installation except in the office, living quarters, engine room, boiler house and smithy.

FORM E.

(RULE 8 OF CHAPTER IV OF PART II.)

License to possess petroleum not being dangerous petroleum in a minor installation.

No. Fee Rs.

LICENSE is hereby granted to for the storage, in the place described below, of gallons of petroleum, not being dangerous petroleum, subject to the rules for the storage of petroleum published in Notification No. 2572, dated 18th May 1909, and to the further conditions on the back of this license.

District Magistrate or authority appointed under rule 2 of Chapter III of Part II.

The *190*

[Description of the place referred to.]

ENDORSEMENT ON FORM E.

Conditions of License.

1. Every tank of which the capacity exceeds fifteen thousand gallons shall either be separately surrounded by a wall or embankment of substantial construction, or shall be sunk in an excavation. The enclosure thus formed shall be of dimensions sufficient to contain the total quantity of oil capable of being contained in the tank and shall be so constructed as to prevent the escape therefrom of any oil in the form of liquid, whether under the action of fire or otherwise. The space enclosed by such wall or excavation and not occupied by the tanks shall be kept entirely clear and unoccupied.

2. The distance to be kept clear between a tank and the walls or embankments which surround it shall be, measuring from the ground level—

(*a*) for horizontal tanks, not less than one-third the height of the tank;

(*b*) for perpendicular tanks, not less than one-half the height of the tank.

3. The height of walls or embankments surrounding the installation shall be not less than two feet six inches from the ground level.

4. The following distances shall be kept clear between protected works not forming part of the installation and the enclosure walls or embankments:—

Where the number of gallons stored is.	Distance to kept clear.
5,000 and under	Not less than 15 feet.
Over 5,000 and up to 20,000	Ditto 20 „
Over 20,000 and up to 50,000...	Ditto 30 „

Provided that these distances may be reduced by the Governor in Council on the recommendation of the Chief Inspector of Explosives in cases where screen walls are provided or other special precautions taken or where there are special circumstances which, in the opinion of the Chief Inspector of Explosives, warrant the reduction.

5. Soldering shall only be permitted in a separate room or building placed as far from the tanks as can be conveniently arranged, in which no storage or filling shall be permitted. No more tins shall be allowed in the soldering room at any one time than are necessary for expeditious working.

6. No fire or lights, except those necessary in the soldering room and watchman's house, shall be permitted.

7. If the installation contains tanks of which the capacity does not exceed fifteen thousand gallons either—

(*a*) each tank shall be separately enclosed in the manner prescribed in condition 1, or

(*b*) the entire installation shall be surrounded by a masonry wall or embankment or a combination of these forming an enclosure of dimensions sufficient to contain, and prevent the overflow of, all the oil that may be stored at any one time within such walls or embankments.

8. In the case of all storage sheds within an installation, which is not surrounded by a masonry wall or embankment as provided in clause (*b*) of condition 7, either the doorways and other openings of the building shall be built up to a height of two feet above the level of the ground outside it, or the floor sunk to a depth of two feet below the level of the ground, so that the petroleum cannot flow out from the building in case of its escape from the receptacle in which it is contained, or the building itself shall be surrounded with a masonry wall or embankment or both not less than two feet high. When the quantity of petroleum stored exceeds 16,000 gallons, the height or depth shall be three feet.

A combination of these methods is permissible.

FORM F.

(RULE 9 OF CHAPTER IV OF PART II.)

Special license to possess and transport dangerous petroleum for owners of motor-vehicles.

No. Free of charge.

LICENSE is hereby granted to owner (or hirer of a motor-vehicle (or vehicles) for the possession of gallons of dangerous petroleum for use therein at* and for its transport on the said motor-vehicle (or vehicles) for the purpose of use therein, subject to the rules for the possession and transport of dangerous petroleum published in Notification No. 2572, dated 18th May 1909, and to the conditions at the back of this license.

When the quantity exceeds 40 gallons. *Secretary to the Government of Bombay.*

When the quantity does not exceed 40 gallons. *District Magistrate or authority appointed under rule 2 of Chapter III of Part II.*

The *190* .

* Situation and description of storage shed above referred to.

ENDORSEMENT ON FORM F.

Conditions of the License.

1. The dangerous petroleum shall not be kept, used or transported except in gas-tight tinned or galvanized sheet-iron, steel or lead plate drums or receptacles containing each not more than four gallons and fitted with well-made filling holes and well-fitting screw plugs or fitted with screw cap or other cap with metal air-tight under cap. Such drums or receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch. Provided that wood cases shall not be necessary when the drums or receptacles are made of tinned or galvanized sheet-iron, or steel, and have following thickness of metal:—

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 gallons	22 B. W. G.

2. The drums or receptacles shall be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure.

3. Every such vessel, not forming part of a motor-vehicle, when used for transporting or keeping dangerous petroleum, shall bear the words "Dangerous Petroleum—Highly inflammable" legibly and indelibly stamped or marked thereon, or on a metallic or enamelled label attached thereto.

4. An air-space of at least one-tenth of its capacity shall be left in each drum or receptacle at the time of filling to allow for expansion of the dangerous petroleum.

5. Before repairs are done to any such vessel, that vessel shall, as far as practicable, be cleaned by the removal of all dangerous petroleum and of all dangerous vapours derived from the same.

6. The storage shed in which the dangerous petroleum is stored shall be well ventilated and constructed of uninflammable materials, provided, however, that the doors and windows may be of wood.

7. Where a storage shed forms part of, or is attached to, another building, and when the intervening floor or partition is of an unsubstantial or inflammable character, or has an opening therein, the whole of such building shall be deemed to be the storage shed, and no portion of such storage shed shall be used as a dwelling or as a place where persons assemble. A storage shed shall have a separate entrance from the open air distinct from that of any dwelling or building in which persons assemble.

8. The amount of dangerous petroleum to be kept in any one storage shed, whether or not upon motor-vehicles, shall not exceed sixty gallons at any one time.

9. The filling or replenishing of any vessels with dangerous petroleum shall not be carried on, nor shall the contents of any such vessel be exposed, in the presence of fire or artificial light, except a light of such construction, position and character as not to be liable to ignite any inflammable vapour, and no artificial light shall be brought within dangerous proximity of the place where any vessel containing dangerous petroleum is being kept.

10. In the case of all dangerous petroleum kept or transported for the purpose of, or in connection with, any motor-vehicle, (*a*) all due precautions shall be taken for the prevention of accidents by fire or explosion and for the prevention of unauthorised persons having access to any dangerous petroleum kept or transported and to the vessels containing, or having actually contained the same, and (*b*) every person managing or

employed on or in connection with any motor-vehicle shall abstain from every act whatever, which tends to cause fire or explosion, and which is not reasonably necessary, and shall prevent any other person from committing such act.

11. The storage shed shall be liable to inspection by an officer not being of lower rank than an Inspector of Police authorised by the Governor in Council in this behalf.

FORM G.

(RULE 1 OF CHAPTER V OF PART II.)

General license to transport petroleum other than dangerous petroleum.

No. Fee Rs. 100.

A GENERAL license is hereby granted to to transport petroleum, other than dangerous petroleum, subject to the rules contained in Chapter V of Part II of the rules published in Government Notification No. 2572, dated 18th May 1909, and to the condition at the back of this license.

This license shall continue in force till the .

District Magistrate or other authority appointed under rule 2 of Chapter III of Part II.

The *190* .

ENDORSEMENT ON FORM G.

Condition of the License.

The petroleum, if not in bulk, shall be packed in air-tight tins or drums of steel or iron, or other receptacles not easily broken or in tank-carts of a pattern approved by the Governor in Council in this behalf, or in bottles securely stoppered and carefully packed so as to avoid risk of breakage.

FORM H.

(RULE 2 OF CHAPTER V OF PART II.)

General license to transport dangerous petroleum otherwise than in bulk.

No. Fee Rs. 50.

A GENERAL license is hereby granted to to transport dangerous petroleum otherwise than in bulk, subject to the rules contained in Chapter V of Part II of the rules published in Government Notification No. 2572, dated 18th May 1909, and to the further conditions on the back of this license.

This license shall continue in force till the .

When the quantity to be transported at a time exceeds 40 gallons.

Secretary to the Government of Bombay.

When the quantity to be transported at a time does not exceed 40 gallons.

District Magistrate or other authority appointed under rule 2 of Chapter III of Part II.

The *190* .

ENDORSEMENT ON FORM H.

Conditions of License.

1. The petroleum must be contained in gas-tight tinned or galvanized sheet-iron, steel, or lead plate receptacles containing each not more than forty gallons and fitted with well-made filling holes and well-fitting screw plugs, or with screw cap or other cap with metal air-tight under cap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch :

Provided that wooden cases shall not be necessary where the receptacles are made of tinned or galvanized sheet-iron or steel, and have the following thickness of metal :—

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 but does not exceed 4 gallons	22 B. W. G.
(3) When the capacity exceeds 4 but does not exceed 8 gallons	20 B. W. G.
(4) When the capacity exceeds 8 but does not exceed 20 gallons	16 B. W. G.
(5) When the capacity exceeds 20 but does not exceed 30 gallons	14 B. W. G.
(6) When the capacity exceeds 30 but does not exceed 40 gallons	12 B. W. G.

2. An air-space of at least one-tenth of its capacity must be left in each receptacle at the time of filling.

3. The receptacles must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit.

4. The nature of the contents and the words "Highly inflammable" must be distinctly marked on the receptacles.

FORM I.

(Rule 4 of Chapter V, Part II.)

Pass to be granted by the holder of General License No. for the transport of $\frac{\text{dangerous}}{\text{non-dangerous}}$ petroleum $\frac{\text{otherwise than in bulk}}{\text{in bulk or otherwise than in bulk}}$ subject to the rules contained in Chapter V of Part II of the rules published in Government Notification No. 2572, dated 18th May 1909, and to the further conditions on the back of this pass.

* To be omitted when the petroleum is transported in bulk.

This pass covers ($\frac{\text{drums}}{\text{tins}}$ / $\frac{\text{cases}}{\text{packages}}$ containing *)

gallons of $\frac{\text{dangerous}}{\text{non-dangerous}}$ petroleum being the property of while in transport from to .

The 190 . *Holder of General License No.*

ENDORSEMENT ON FORM I.

Conditions of pass.

I.—For dangerous petroleum in the case of the holder of a license in Form II.

1. The petroleum must be contained in gas tight tinned or galvanized sheet-iron, steel, or lead plate receptacles containing each not more than forty gallons and fitted with well made filling wholes and well fitting screw-plugs, or with screw cap or other cap with metal air-tight under cap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch :

Provided that wooden cases shall not be necessary where the receptacles are made of tinned or galvanized sheet-iron or steel, and have the following thickness of metal :

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W G.
(2) When the capacity exceeds 2 but does not exceed 4 gallons	22 B. W. G.
(3) When the capacity exceeds 4 but does not exceed 8 gallons	20 B. W. G.
(4) When the capacity exceeds 8 but does not exceed 20 gallons	16 B. W. G.
(5) When the capacity exceeds 20 but does not exceed 30 gallons	14 B. W. G.
(6) When the capacity exceeds 30 but does not exceed 40 gallons	12 B. W. G.

2. An air-space of at least one-tenth of its capacity must be left in each receptacle at the time of filling.

3. The receptacles must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit.

4. The nature of the contents and the words "Highly inflammable" must be distinctly marked on the receptacles.

II.—For dangerous petroleum in the case of the holder of a license in Form L.

1. The quantity of dangerous petroleum to be tansported under this pass shall not exceed 60 gallons.

2. The petroleum must be contained in gas-tight tinned or galvanized sheet-iron, steel, or lead plate receptacles containing each not more than four gallons and fitted with well-made filling holes and well-fitting screw plugs or with screw cap or other cap with metal air-tight under cap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch :

Provided that wooden cases shall not be necessary where the receptacles are made of tinned or galvanized sheet iron or steel and have the following thickness of metal :

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 gallons	22 B. W. G.

3. An air-space of at least one-tenth of its capacity must be left in each receptacle at time of filling.

4. The receptacles must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit.

5. The nature of the contents and the words "Highly inflammable" must be distinctly marked on the receptacles.

III.—For petroleum other than dangerous petroleum.

The petroleum, if not in bulk, shall be packed in air-tight tins or drums of steel or iron, or other receptacles not easily broken, or in tank-carts of a pattern approved by the Governor in Council in this behalf, or in bottles securely stoppered and carefully packed so as to avoid risk of breakage.

FORM J.

(RULE 5 OF CHAPTER V OF PART II.)

Special license to transport petroleum other than dangerous petroleum.

No. Fee Rs.

LICENSE is hereby granted to to transport from to * (cases or packages containing) * gallons of petroleum subject to the rules contained in Chapter V of Part II of the rules published in Government Notification No. 2572, dated 18th May 1909, and to the further conditions on the back of this license.

*To be omitted when the petroleum is transported in bulk.

The license shall continue in force till the day of .

District Magistrate or authority appointed under rule 2 of Chapter III of Part II.

The 190 .

ENDORSEMENT ON FORM J.

Condition of the License.

The petroleum, if not in bulk, shall be packed in air-tight tins or drums of steel or iron, or other receptacles not easily broken, or in tank-carts of a pattern approved by the Governor in Council in this behalf, or in bottles securely stoppered and carefully packed so as to avoid risk of breakage.

FORM K.

(RULE 6 OF CHAPTER V OF PART II.)

Special license to transport dangerous petroleum.

No. Fee Rs.

LINCENSE is hereby granted to of to transport cases or packages containing in all gallons of dangerous petroleum from to ,subject to the rules contained in Chapter V of Part II of the rules published in Government Notification No. 2572, dated 18th May 1909, and to the further conditions on the back of this license.

The amount of petroleum in each case or package is stated below.

This license shall continue in force till the day of .

When the quantity exceeds 40 gallons.

Secretary to the Government of Bombay.

When the quantity does not exceed 40 gallons.

District Magistrate or authority appointed under rule 2 of Chapter III of Part II.

The 190 .

ENDORSEMENT ON FORM K.

Conditions of License.

1. The petroleum must be contained in gas-tight tinned or galvanized sheet-iron, steel, or lead plate receptacles containing each not more than forty gallons and fitted with well-made filling holes and well-fitting screw plugs, or with screw cap or other cap with metal air-tight under cap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch:

Provided that wooden cases shall not be necessary where the receptacles are made of tinned or galvanized sheet iron or steel, and have the following thickness of metal:

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 but does not exceed 4 gallons	22 B. W. G.
(3) When the capacity exceeds 4 but does not exceed 8 gallons	20 B. W. G.
(4) When the capacity exceeds 8 but does not exceed 20 gallons	16 B. W. G.
(5) When the capacity exceeds 20 but does not exceed 30 gallons	14 B. W. G.
(6) When the capacity exceeds 30 but does not exeeed 40 gallons	12 B. W. G.

2. An air-space of at least one-tenth of its capacity must be left in each receptacle at the time of filling.

3. The receptacles must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit.

4. The nature of the contents and the words "Highly inflammable" must be distinctly marked on the receptacles.

FORM L.

(RULE 9 OF CHAPTER V OF PART II.)

General license to the owner of a motor-vehicle to transport dangerous petroleum otherwise than on a motor-vehicle.

No. Fee Rs. 5.

A GENERAL license is hereby granted to to transport dangerous petroleum otherwise than in bulk, up to $\frac{40}{60}$ gallons at a time, subject to the rules contained in Chapter V of Part II of the rules published in Government Notification No. 2572, dated 18th May 1909, and to the further conditions on the back of this license.

This license shall continue in force till the .

When the quantity exceeds 40 gallons. *Secretary to the Government of Bombay.*

When the quantity does not exceed 40 gallons. *District Magistrate or authority appointed under rule 2 of Chapter III of Part II.*

The

ENDORSEMENT ON FORM L.

Conditions of License.

1. The petroleum must be contained in gas-tight tinned or galvanized sheet-iron, steel, or lead plate receptacles containing each not more than four gallons and fitted with well-made filling holes and well-fitting screw-plugs, or with screw cap or other cap with metal air-tight under cap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch :

Provided that wooden cases shall not be necessary where the receptacles are made of tinned or galvanised sheet iron or steel and have the following thickness of metal :—

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 gallons	22 B. W. G.

2. An air-space of at least one-tenth of its capacity must be left in each receptacle at the time of filling.

3. The receptacles must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence of extraordinary accident, to be broken or become defective, leaky or insecure in transit.

4. The nature of the contents and the words "Highly inflammable" must be distinctly marked on the receptacles.

FORM M.

(RULE 22 (2) OF PART III.)

General license to import dangerous petroleum in quantities exceeding 40 gallons.

No. Fee Rs.

A GENERAL license is hereby granted to to import dangerous petroleum at the port of , subject to the rules contained in Part III of the rules published in Government Notification No. 2572, dated 18th May 1909, and to the further conditions on the back of this license.

This license shall continue in force till the .

Secretary to the Government of Bombay.

The 190 .

ENDORSEMENT ON FORM M.

Conditions of License.

1. Dangerous petroleum shall be imported in gas-tight tinned or galvanized sheet-iron, steel, or lead plate receptacles containing each not more than forty gallons and fitted with well-made filling holes and well-fitting screw plugs, or with screw cap or other cap with metal air-tight under cap. Such receptacles shall be packed in strong wooden cases, the thicknes of the wood to be not less than three-eighths of an inch :

Provided that wooden cases shall not be necessary where the receptables are made of tinned or galvanized sheet iron or steel and have the following thickness of metal :—

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 but does not exceed 4 gallons	22 B. W. G.
(3) When the capacity exceeds 4 but does not exceeds 8 gallons	20 B. W. G.
(4) When the capacity exceeds 8 but does not exceed 20 gallons	16 B. W. G.

	Not less than
(5) When the capacity exceeds 20 but does not exceed 30 gallons	14 B. W. G.
(6) When the capacity exceeds 30 but does not exceed 40 gallons	12 B. W. G.

2. An air-space of at least one-tenth of its capacity shall be left in each receptacle at the time of filling.

3. The receptacles must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit.

APPENDIX C.

MADRAS.

(See Fort St. George Gazette, Pt. I, August 3rd, 1909, pp. 708—726.)

NOTIFICATIONS.

Ootacamund, July 24, 1909.

No. 441.—In exercise of the powers conferred by section 9 of the Indian Petroleum Act, 1899 (VIII of 1899), and in supersession of all previous notifications on the subject, the Governor of Fort St. George in Council, with the previous sanction of the Governor General in Council, is pleased to make the following rules for the importation, possession and transport of petroleum in the Presidency of Madras :—

CONTENTS.

PART I.

PRELIMINARY.

RULES.

1. Definitions.

PART II.

POSSESSION AND TRANSPORT OF PETROLEUM.

CHAPTER I.—Of possession of Petroleum.

1. Smoking prohibited.
2. Supervision of operations within installation or storage shed.
3. Cleanliness of installaion.
4. Supply of sand or dry earth in installation.
5. Marking of capacity of tanks.
6. Protection from lightning.
7. Testing of lightning-conductor by licensee.
8. Official testing of lightning-conductor.
9. Time for work in installations or storage sheds.
10. Closure of pipes and openings.
11. Material for storage sheds.
12. Posting up of rules and conditions.

CHAPTER II.—Transport of Petroleum.

1. Conditions of carriage of petroleum in bulk by water.
2. Petroleum in bulk on barges or flats.
3. Inflammable cargo, or passengers.
4. Towage of barge or flat carrying petroleum.

RULES.

5. Towage of additional barge or flat carrying inflammable cargo.
6. Exemption of petroleum having a flashing point above 150°.
7. Cleaning of compartments.
8. Hatches to be kept closed.
9. Loading and discharge.
10. Naked lights, fire or smoking prohibited.
11. Flag to be carried.
12. Loading and unloading by night.
13. Validity of license granted in another Province.
14. Transport by sea of petroleum which has not been tested.
15. Transport by sea of petroleum which has been tested.

CHAPTER III—General provisions relating to Licenses.

1. Applications for licenses.
2. Licensing authority.
3. Refusal of license.
4. Forfeiture of license.
5. Particulars of license.
6. Renewal of licenses.
7. Supply of rules to licensee.
8. Procedur on death or disability of licensee.
9. Loss of license.

CHAPTER IV.—Licenses for the possession of petroleum.

1. Continuance of license.
2. Petroleum not in bulk other than dangerous petroleum.
3. Dangerous petroleum not in bulk.
4. Dangerous petroleum not exceeding forty gallons.
5. Transfer of certain licenses.
6. Possession of dangerous petroleum in receptacles containing more than forty gallons each.
7. Storage in major installations.
8. Storage in minor installations.
9. Dangerous petroleum for use on motor-vehicles.
10. Particulars to be given in applications for licenses for the possession of petroleum other than licenses under rules 4 and 9.
11. Certificate of safety to be furnished.
12. Particulars to be given in applications for licenses under rules 4 and 9.
13. Storage by port authorities.
14. Storage in an installation or storage shed erected on land belonging to port authorities.

CHAPTER V.—Of Licenses for the transport of Petroleum.

1. General licenses for the transport of non-dangerous petroleum.
2. General licenses for the transport of dangerous petroleum.
3. Effect of general license.
4. Pass for transport of petroleum.
5. Special licenses for the transport of petroleum other than dangerous petroleum.
6. Special licenses for the transport of dangerous petroleum.

RULES.

7. Effect of special license.
8. Particulars to be given in applications for special licenses.
9. Transport of dangerous petroleum by motorists otherwise than on a motor-vehicle.

CHAPTER VI.—Fees.

1. Method of levying fees.
2. Fees for licenses for possession of petroleum.
3 Fees for licenses for transport of petroleum.
4. Fee for license granted for unexpired portion of an original license.
5. Fee for duplicate licenses.

PART III.

IMPORTATION OF PETROLEUM.

1. Ports of importation.
2. Declaration by master of ship carrying petroleum or by the ship's agent.
3. Delivery of certificate.
4. Certificate and declaration to be forwarded to Chief Customs-officer.
5. Delivery of samples.
6. Selection of samples.
7. Sealing of samples and forwarding the same to testing officer.
8. Methods of test.
9. Averaging results of tests.
10. Procedure when tests show want of uniformity.
11. Procedure on report.
12. Report of testing officer.
13. Fee for testing.
14. When a ship carrying petroleum may anchor at ordinary anchorage.
15. Exception in respect of petroleum declared dangerous which is not in excess of forty gallons.
16. When a ship carrying petroleum must anchor at a special anchorage.
17. Petroleum referred to in rule 16 not to be landed until it has been tested.
18. Landing of petroleum in anticipation of the testing officer's report.
19. Landing of petroleum in bulk.
20. Landing of petroleum otherwise than in bulk.
21. Transhipment of petroleum.
22. Import licenses how obtainable.
23. Petroleum comprised in ship's stores.
24. Petroleum having a flashing point above 150°.

FORMS.

RULES UNDER SECTION 9 OF THE INDIAN PETROLEUM ACT, 1899, FOR THE IMPORTATION, POSSESSION AND TRANSPORT OF PETROLEUM IN THE PRESIDENCY OF MADRAS.

PART I.—PRELIMINARY.

Definitions.

1. In these rules,

(*a*) "Part" means a Part of these rules ;—

(*b*) "certificated petroleum" means petroleum certified to be non-dangerous petroleum by a certificate of such description as the Governor in Council may, from time to time, by written order, prescribe, granted at the port of shipment ;

(c) "Petroleum in bulk" means petroleum in quantities exceeding five hundred gallons, contained in any one receptacle;

(d) "installation means a place specially prepared for the storage of petroleum in bulk, or for bulk combined with non-bulk storage, and may be either a major or a minor installation;

(e) "major installation" means an installation—

(1) capable of containing an amount of oil, whether in bulk only or in combined bulk and non-bulk storage, exceeding fifty thousand gallons, or

(2) in which tin-making operations are carried on;

(f) "minor installation" means an installation—

(1) capable of containing an amount of oil, whether in bulk only or in combined bulk and non-bulk storage, not exceeding fifty thousand gallons, and

(2) in which no tin making operations are carried on:

(g) "storage shed" means a building used for the storage of petroleum otherwise than in bulk, and may or may not form part of an installation;

(h) "protected works" includes buildings in which persons dwell or assemble, docks, wharves, timber yards, other petroleum stores, and any other place not forming part of an installation, which the Governor in Council may by notification declare as such;

(i) "testing officer" means the testing officer appointed by the Governor in Council under section 10 of the Act for any port at which petroleum may be imported under these rules;

(j) "motor-vehicle" means any vechicle or vessel propelled by a motor, in which petroleum is used as fuel; and

(k) "owner," as applied to a motor-vehicle, includes a person who hires, or is otherwise entitled for the time being to use or work a motor-vehicle.

PART II.—POSSESSION AND TRANSPORT OF PETROLEUM.

CHAPTER I.— Possession of Petroleum.

Smoking prohibited.

1. No smoking shall be permitted inside any installation or storage shed.

Supervision of operations within installation or storage shed.

2. All operations within any installation or storage shed shall be conducted under the supervision of a responsible agent or supervisor.

Cleanliness of installation.

3. The ground in the interior of an installation shall be kept clean and free from goods of a combustible nature, vegetation and rubbish.

Supply of sand or dry earth in installation.

4. A supply of sand or dry earth shall always be kept in an installation for the purpose of extinguishing fire.

Marking of capacity of tanks.

5. The capacity in gallons of every tank in an installation shall be conspicuously marked on it, and shall be calculated at the rate of 6·25 gallons per cubic foot.

Protection from lightning.

6. Every tank or other receptacle for the storage of petroleum in bulk, except a tank or receptacle which is not of sufficient capacity to contain ten thousand gallons of petroleum and which is so situated as not to be liable to cause danger in the event of the petroleum being ignited, shall be protected by an efficient lightning-conductor.

Explanation.—A tank or receptacle shall be deemed to be so situated as not to be liable to cause danger in the event of the petroleum being ignited, if it is not in close proximity to any other tank or receptacle, or to any building not forming part of the installation, and if it is surrounded by a wall, or embankment, or sunk in an excavation, the enclosure thus formed being sufficient to contain the whole contents of the tank or receptacle.

Testing of lightning-conductor by licensee.

7. Not less than once in every year the licensee of an installation shall test or cause to be tested the efficiency of the conductor in such manner as the Chief Inspector of Explosives may, by general or special order, declare to be sufficient, and a certificate showing the date of the last test shall be posted in a conspicuous place within the installation.

Official testing of lightning conductor.

(8) Any officer appointed by the Governor in Council in this behalf may enter any installation for the purpose of testing the efficiency of the conductor, at any time after sunrise and before sunset.

Time for work in installations or storage sheds.

9. No installation or storage shed shall be open, and no work in any installation or storage shed shall be permitted, between sunset and sunrise; provided that in cases where electric lighting is exclusively used, night working may be permitted by the Governor in Council on the recommendation of the Chief Inspector of Explosives.

Closure of pipes and openings.

10. Where there are any pipes or openings for draining out water in any enclosure wall, arrangements shall be made whereby they can be closed, and they shall only be kept open when actually necessary for drainage purposes. The nature of such arrangements shall be shown in the specifications which are required under rule 10 of Chapter IV of this Part, to be submitted with the application for a license.

Material for storage sheds.

11. All storage sheds in an installation shall be built of uninflammable material.

Posting up of rules and conditions.

12. There shall be hung up in a conspicuous place in every installation and storage shed for which a license has been granted, copies in English and the vernacular. of the rules contained in this Chapter, and of the conditions endorsed on the license.

CHAPTER II —Transport of Petroleum.

Conditions of carriage of petroleum in bulk by water.

1. Petroleum in bulk shall not be carried by water except on a ship certified as suitable for the carriage of petroleum in bulk by an officer appointed by the Governor in Council in this behalf, and the petroleum shall be stowed in such part of the ship and in such manner as may be approved, by general or special order, by the authority so appointed.

Petroleum in bulk on barges or flats.

2. Petroleum in bulk shall not. except with the sanction of the Governor in Council, be transported on any barge or flat which is not towed by a steamer or motor tug.

Inflammable cargo or passengers.

3. No ship shall carry petroleum in bulk which carries at the same time passengers, or any inflammable cargo other than petroleum and its products.

Towage of barge or flat carrying petroleum.

4. No steamer carrying inflammable cargo other than petroleum and its products shall tow a barge or flat carrying petroleum in bulk.

Towage of additional barge or flat carrying inflammable cargo.

5. No steamer towing a barge or flat carrrying petroleum in bulk shall at the same time tow any other barge or flat carrying inflammable cargo other than petroleum and its products.

Exemption of petroleum having a flashing point above 150o.

6. Rules 4 and 5 of this Chapter shall not apply when the petroleum carried in bulk has a flashing point above 150o Fahrenheit.

Cleaning of compartments.

7. When any ship has discharged petroleum in bulk, the oil compartments shall be thoroughly cleaned and freed from petroleum and petroleum vapour, before any other cargo or passengers are taken on board.

Hatches to be kept closed.

8. The hatches of oil tanks in all ships certified under rule 1 of this Chapter as suitable for the carriage of petroleum in bulk, and the manholes in the hatches, shall be kept closed (except in so far as it may be necessary to open them to take on board or discharge petroleum or to clean tanks), so long as there is petroleum in the tanks, and until the tanks have been thoroughly cleaned and freed from petroleum and petroleum vapour.

Loading and discharge.

9. No petroleum in bulk shall be taken on board or discharged from any ship certified as suitable for the carriage of petroleum in bulk, except through a suitable pipe prepared for the purpose.

Naked lights, fire or smoking prohibited.

10. No fire, naked lights or smoking shall be allowed on board any flat or barge carrying petroleum in bulk.

Flag to be carried.

11. The person in charge of any flat or barge carrying petroleum in bulk shall, from sunrise to sunset, show at its stern a conspicuous red flag having the words "Petroleum Boat" marked on it in black letters.

Loading and unloading by night.

12. No petroleum in bulk shall be loaded on or unloaded from any ship between sunset and sunrise, except when electric light is exclusively used.

Validity of license granted in another Province.

13. Petroleum may be transported into and within the limits of the Madras Presidency under cover of a license granted by the prescribed authority in any other Province of British India or in any area outside British India to which the Indian Petroleum Act, 1899, may be applied, provided that the conditions of such license are observed throughout the period during which the petroleum is in transit.

Transport by sea of petroleum which has not been tested.

14. Petroleum which has been imported into any port specified in rule 1 of Part III, and which has not been tested at the port of import in accordance with the rules contained in that Part, shall not be transported to any other port in British India save one specified in rule 1 of Part III, and the provisions of all the rules of that Part, except rule 22, shall be deemed to apply to such petroleum when it arrives at such other port.

Transport by sea of petroleum which has been tested.

15. Petroleum which has been tested at any port in British India may be transported to any other port in British India, and the provisions of rules 2, 3, 4, 14 (except the proviso), 16, 19 and 20 of Part III shall apply to such petroleum when it arrives at such other port.

CHAPTER III.—General provisions relating to Licenses.

Applications for licenses.

1. All applications for licenses except those referred to in rules 13 and 14 of Chapter IV of this Part for the possession or transport of petroleum shall be made to the District Magistrate, or to such authority as the Governor in Council may appoint under the next following rule to be a licensing authority.

Note.—The functions of the District Magistrate under this rule and the rule next following and under rule 5 (2) of Chapter IV of this part shall be exercised in the city of Madras by the President of the Corporation.

Licensing authority.

2. Licenses—

(*a*) for the possession of non-dangerous petroleum, not being petroleum in bulk,

(*b*) for the possession of non-dangerous petroleum in a minor installation.

(*c*) for the possession or transport of dangerous petroleum in quantities not exceeding forty gallons, and

(*d*) for the transport of petroleum, not being dangerous petroleum, otherwise than by a pipe line,

may be granted by a District Magistrate, or by such other authority as the Governor in Council may from time to time by order in writing appoint in this behalf. In all other cases except as provided in rule 14 of Chapter IV of this part the licensing authority shall be the Governor in Council:

Provided that in the case of renewals of existing licenses the Governor in Council may delegate its powers under this rule to the District Magistrate or to such other authority as the Governor in Council may from time to time by an order in writing appoint in this behalf.

Refusal of licenses.

3. The licensing authority may, for reasons to be communicated to the applicant, refuse a license in any case:

Provided that the licensing authority shall not refuse a license for the possession of petroleum in a minor installation, unless such authority has first made a reference to the Chief Inspector of Explosives and obtained his concurrence.

For feiture of license.

4. Every license granted under these rules shall be liable to be forfeited for any contravention of the Act, or of any rule thereunder, or of any condition contained in such license, or for any other reason deemed by the licensing authority to be good and sufficient, and recorded by him in writing.

Particulars of license.

5. Every license and pass granted under these rules shall be held subject to the conditions endorsed on it, and shall contain all the particulars which are contained in the form prescribed for it by these rules:

Provided that in the case of installations and storage sheds in existence before these rules were made, the license may contain in lieu of the particulars contained in the form prescribed for it by these rules, either such particulars as may have been entered in the license granted for such installation or storage shed under the rules heretofore in force, or such particulars as may in each case be approved by the Chief Inspector of Explosives.

Renewal of licenses.

6. (1) Every application for the renewal of license shall be made in the same manner, as an application for an original license.

(2) Every such application shall be made at a date not less than thirty days before the date on which the original license expires, and, if the application is so made, the premises shall be held to be duly licensed until such date, as the licensing authority issues the renewed license or until an intimation that the renewal of the license is refused has been communicated to the applicant.

(3) The same fee shall be charged for the renewal of a license as for a new license.

Supply of rules to licensee.

7. When any license is granted for the possession or transport of petroleum, a copy of the rules contained in Chapter I of this Part in the case of a license for possession, and in Chapter II of this Part in the case of a license for transport, printed in English and the vernacular, shall be given, together with the license, to the licensee.

Procedure on death or disability of licensee.

8. Where a licensee dies or becomes insolvent or becomes mentally incapable or otherwise disabled, the person carrying on the business of such licensee shall not be liable to any penalty or forfeiture under the Act or these rules for acting under the license during such time as may reasonably be necessary to allow him to make an application for a new license in his own name for the unexpired portion of the original license.

Loss of license.

9. Where a license granted under these rules is lost or accidentally destroyed, a duplicate may be granted.

CHAPTER IV.—Licenses for the possession of Petroleum.

Continuance of license.

1. Save as provided in rules 13 and 14 of this Chapter, every license for the possession of petroleum, shall remain in force until the 31st of December next following the date of issue of the license.

Petroleum not in bulk, other than dangerous petroleum.

2. Licenses for the possession of petroleum, not being dangerous petroleum, otherwise than in bulk, may be granted in Form A.

Dangerous petroleum not in bulk.

3. Licenses for the possesssion of dangerous petroleum, not in bulk, in quantity exceeding 40 gallons may be granted in Form B.

Dangerous petroleum not exceeding 40 gallons.

4. Licenses for the possession of dangerous petroleum in quantity not exceeding 40 gallons may be granted in Form C.

Transfer of certain licenses.

5. (1) The holder of a License in Form A, B or C, may, at any time before the expiry of the license, apply for permission to transfer his license to another person.

(2) Such application shall be made to the District Magistrate, who shall, if he approves of the transfer, enter upon the license, under his signature, an endorsement to the effect that the license has been transferred to the person named.

(3) A fee of Re. 1 shall be charged on each such application.

(4) The person to whom the license is so transferred shall enjoy the same powers and be subject to the same obligations under the license as the original holder.

Possession of dangerous petroleum in receptacles containing more than 40 gallons each.

6. Special licenses for the possession of dangerous petroleum in receptacles containing more than 40 gallons, but not more than 500 gallons each, may be granted on such terms as the Governor in Council may prescribe on the recommendation of the Chief Inspector of Explosives.

7. Licenses for the possession of any stated quantity of petroleum, not being dangerous petroleum, in major installations, in accordance with such specifications and plans as the Governor in Council, on the recommendation of the Chief Inspector of Explosives, may from time to time, by general or special order, approve, may be granted in Form D.

Storage in major installations.

8. Licenses for the possession of any stated quantity of petroleum, not being dangerous petroleum, in minor installations, in accordance with such specifications and plans as the Chief Inspector of Explosives may from time to time, by general or special order, approve, may be granted in Form E.

Storage in minor installations.

9. (1) Licenses in Form F may be granted free of charge for the possession of dangerous petroleum for use on motor-vehicles, and for its transport thereon, for the purpose of use therein.

Dangerous petroleum for use on motor-vehicles.

(2) The provisions of the ordinary rules relating to the possession of dangerous petroleum shall regulate the possession of dangerous petroleum for use on motor-vehicles, save in so far as these provisions are varied by the conditions of the license.

Particulars to be given in applications for licenses for the possession of petroleum other than licenses under rules 4 and 9.

10. Every application for a license for the possession of petroleum, other than licenses under rules 4 and 9 of this Chapter, shall specify—

(*a*) the description and quantity of petroleum which the applicant desires to keep,

(*b*) the name and position of the premises intended to be used for the storage of such petroleum, and whether the said premises fulfil the conditions prescribed by Form A, Form B, From D, or Form E, as the case may be,

(*c*) the amount of petroleum, if any, already licensed to be kept on the same premises.

If the application be made for the first time in respect of any major or minor installation or if the quantity of petroleum to be stored in such an installation is to be increased, the application shall be accompanied by specifications and plans drawn to scale.

11. Before petroleum is stored in any major or minor installation for which a license has been granted for the first time, a certificate shall be furnished to the licensing authority to the effect that all enclosure walls and embankments required to be constructed under the conditions of the license are sufficient to ensure safety. The certificate shall be signed by an engineer accepted as qualified for the purpose by the licensing authority. When the license is not granted for the first time but is granted for an increased quantity of petroleum, a certificate shall similarly be furnished to the licensing authority before any quantity of petroleum exceeding the amount which was admissible under the former license is stored in the installation.

Certificate of safety to be furnished.

Particulars to be given in applications for licenses under rules 4 and 9.

12. Every application for a license under rules 4 and 9 of this Chapter shall specify—

(*a*) whether the applicant is the owner of a motor-vehicle,

(*b*) the amount of dangerous petroleum the applicant desires to store,

(*c*) the exact position and nature of the premises intended to be used for the storage of such dangerous petroleum, and whether the said premises fulfil the conditions prescribed by Form C or Form F, as the case may be.

Storage by port authorities.

13. Licenses for the possession of petroleum in an installation or storage shed may be granted by the Governor in Council free of charge to the Madras Port Trust Board subject to such conditions, and for such period, as the Governor in Council may direct.

Storage in an installation or storage shed erected on land belonging to port authorities.

14. Licenses for the possession of petroleum in an installation or storage shed erected on land belonging to the Madras Port Trust Board may, with the previous sanction of the Governor in Council, be granted free of charge by the said Board subject to such conditions and for such period as the said Board may direct.

CHAPTER V.—Licenses for the transport of Petroleum.

General licenses for the transport of non-dangerous petroleum.

1. General licenses for the transport of petroleum, other than dangerous petroleum, may be granted for a period of twelve months in Form G.

General licenses for the transport of dangerous petroleum.

2. General licenses for the transport of dangerous petroleum otherwise than in bulk may be granted for a period of twelve months in Form H.

Effect of general license.

3. Licenses granted under rules 1, 2 and 9 of this Chapter may authorise the holders to transport petroleum without restriction as to destination or total quantity.

Pass for transport of petroleum.

4. The holder of a general license granted under rules 1, 2 or 9 of this Chapter shall, with each consignment of petroleum conveyed under cover of his license, issue to the person who takes charge of the petroleum for the purpose of transporting it, a numbered pass in Form I.

Special licenses for the transport of petroleum other than dangerous petroleum.

5. Special licenses may be granted for the transport of petroleum, other than dangerous petroleum, in quantities exceeding 500 gallons, in Form J.

Special licenses for the transport of dangerous petroleum.

6. Special licenses may be granted for the transport of dangerous petroleum other than in bulk in Form K.

Effect of special license.

7. A special license granted under rules 5 and 6 shall only cover the transport of the particular consignment entered in the license, and shall be valid for such period as may be entered in it.

Particulars to be given in applications for special licenses.

8. Applications for special licenses for the transport of petroleum by rail, by road, by steamer or by barge, or by two or more of these modes of conveyance, shall specify the description and quantity of petroleum to be transported, and the places from and to which, respectively, the petroleum is to be conveyed, and shall describe the receptacles in which it is to be contained, or, in the case of petroleum to be transported in bulk by water, shall state that the ship in which it is to be carried has been certified as required by rule 1 of Chapter II of this Part.

Transport of dangerous petroleum by motorists otherwise than on a motor-vehicle.

9. General licenses in Form L to transport dangerous petroleum up to a maximum of sixty gallons at a time, otherwise than on a motor-vehicle, may be granted for a period of twelve months to owners of motor-vehicles, holding licenses under rule 9, sub-rule (1), of Chapter IV of this Part, to possess petroleum and use or transport it on a motor-vehicle.

CHAPTER VI.—Fees.

Method of levying fees.

1. (1) Where the proceeds of fees leviable for licenses under these rules have been assigned by the Governor in Council to any local authority, the fees shall be levied in such manner as the local authority may from time to time direct.

(2) In all other cases the fees shall be paid in cash on receipt of a notice from the licensing authority that a license will be granted.

(3) The court fee stamp of the value of eight annas representing the fee chargeable under schedule II, Article 1 (*b*) of the Court Fees Act on an application for a license presented to a Magistrate should be attached to the application.

Fees for licenses for possession of petroleum.

2. The following fees shall be charged for licenses for the possession of petroleum, namely :—

Non-dangerous petroleum.

	Rs.	
(*a*) When the quantity to be stored exceeds five hundred but does not exceed one thousand gallons.	12	
(*b*) When the quantity to be stored exceeds one thousand but does not exceed five thousand gallons.	12	for the first one thousand gallons *plus* Rs. 2 for every additional one thousand gallons or part thereof.
(*c*) When the quantity to be stored exceeds five thousand gallons but does not exceed fifty thousand gallons.	20	for the first five thousand gallons *plus* Rs. 4 for every additional one thousand gallons or part thereof.
(*d*) When the quantity to be stored exceeds fifty thousand gallons.	250	

Dangerous petroleum.

	Rs.	
(*e*) When the quantity to be stored does not exceed forty gallons.	3	
(*f*) When the quantity to be stored exceeds forty gallons but does not exceed five hundred gallons.	8	
(*g*) When the quantity to be stored exceeds five hundred gallons.		the same fees as those laid down for non-dangerous petroleum.

Fees for licenses for transport of petroleum.

3. The following fees shall be charged for licenses for the transport of petroleum :—

Non-dangerous petroleum.

	Rs.
Special license—	
(*a*) When the quantity to be transported exceeds five hundred but does not exceed five thousand gallons.	1
(*b*) For every additional five thousand gallons or part of five thousand gallons.	1
General license for the transport of non-dangerous petroleum by rail, by road, or by water for twelve months.	100

Dangerous petroleum.

Special license—	Rs.	
(*i*) When the quantity to be transported does not exceed forty gallons.	2	
(*ii*) When the quantity to be transported exceeds forty gallons but does not exceed four hundred and eighty gallons.	2	for the first forty gallons *plus* 8 annas for every additional forty gallons or part thereof.
(*iii*) When the quantity to be transported exceeds four hundred and eight gallons.	8	for the first four hundred and eighty gallons *plus* Rs. 2 for every additional four hundred and eighty gallons or part thereof.
General license for the transport of dangerous petroleum by the owner of motor-vehicle by road, rail or water, up to a maximum of sixty gallons at a time.	5	
General license for the transport of dangerous petroleum by dealers by rial, road or water.	50	

Fee for license granted for unexpired portion of an original license.

4. A fee of one rupee shall be charged for a new license for the unexpired portion of an original license granted to any person applying for the same in accordance with the provisions of rule 8 of Chapter III of this Part.

Fee for duplicate licenses.

5. A fee of eight annas shall be charged for a duplicate of a license granted in accordance with the provisions of rule 9 of Chapter III of this Part.

PART III.—OF IMPORTATION OF PETROLEUM.

Ports of importation :—Cocanada, Madras, Tuticorin, Cochin, Calicut, Tellicherry, Mangalore.

1. The ports mentioned in the margin are hereby declared to be the only ports at which petroleum may be imported.

Declaration by master of ship carrying petroleum or by the ship's agent.

2. The master of every ship carrying petroleum shall deliver to the pilot before entering any of the ports mentioned in rule 1, a written delaration under his signature stating—

(*a*) what quantity of petroleum the ship is carrying;

(*b*) whether any and, if so. what part of it is dangerous petroleum ;

(*c*) whether any and. if so, what part of it is certificated petroleum;

(*d*) whether any and, if so, what part of it is petroleum having a flashing point above 150° of Fahrenheit's thermometer, and

(*e*) what quantity of petroleum [specifying whether any, and if so, what part of it belongs to each of the classes (*b*), (*c*) and (*d*)], it is intended to land at that port or at any other port in British India :

Provided that, if, in anticipation of a ship's arrival, the agent for such ship delivers to the Port-officer a written declaration as aforesaid under his signature, no such declaration shall be necessary by the master of the ship.

Delivery of certificate.

3. If the master or agent declares that any petroleum is certificated petroleum which it is intended to land at that port or at any other port in British India, he shall deliver to the pilot or Port-officer, as the case may be, along with his declaration, the certificate relating to such petroleum.

Certificate and declaration to be forwarded to Chief Customs-officer.

4. Every certificate and declaration delivered to a pilot under rules 2 and 3 shall be made over by him without delay to the Port-officer, and all certificates and declarations received by the Port-officer shall, with all convenient despatch, be forwarded by him to the Chief Customs-officer.

Delivery of samples.

5. (1) When the master of, or the agent for, a ship has made the declaration required by rule 2, the Chief Customs-officer shall direct an officer to go on board the vessel and obtain samples of all the petroleum on board which it is intended to land at that port. If the importer so desires, he shall also take samples of all the petroleum on board which it is intended to land at any other port in British India.

(2) The master shall deliver to the officer aforesaid, without charge, samples of every variety of petroleum comprised in the petroleum of which samples are to be taken under clause (1). Such samples shall, if such officer so require, be taken from the particular receptacles indicated by him and under his personal superintendence, and shall not exceed forty fluid ounces :

Provided that when the petroleum is in cases, samples may be taken as delivery proceeds.

Selection of samples.

6. The minimum number of samples to be selected of each brand or quality contained in the cargo shall be as follows :—

(*a*) of certificated petroleum in cases—

one sample for every fifteen thousand cases or fraction of fifteen thousand cases ;

(*b*) of certificated petroleum in casks or drums declared to be of uniform quality —one sample for every one hundered and twenty thousand gallons or part of one hundred and twenty thousand gallons ;

(*c*) of certificated petroleum in bulk or in tanks—

one sample from each group of tanks or tank compartments certified to be of the same brand or quality ;

(*d*) of petroleum other than certificated, in cases—

one sample for every ten thousand cases or fraction of ten thousand cases;

(*e*) of petroleum other than certificated, in casks or drums declared to be of uniform quality--

one sample for every eighty thousand gallons or part of eighty thousand gallons;

(*f*) of petroleum other than certificated in bulk or in tanks—

one sample from each tank or tank-compartment.

Sealing of samples and forwarding the same to testing officer.

7. When the samples required have been delivered to the officer aforesaid, such officer shall forthwith seal the bottles containing the samples, and shall label them with the name of the ship, the name of the consignee, and such other distinguishing marks as may be necessary. He shall then forward them to the testing officer.

Methods of test.

8. The testing officer shall test the samples thus received in the manner laid down in the first Schedule to the Act.

Averaging results of tests.

9. If more than one sample of any one brand or quality forming the cargo or a portion of the cargo of a ship is sent to the testing officer for report, that officer shall test each sample separately and strike an average of the results. If the average flashing point is not lower than 73° of Fahrenheit's thermometer, and no one test gives a flashing point below 70° of that thermometer, he shall report the whole of the petroleum represented by the samples to the Chief Customs-officer as non-dangerous.

Procedure when tests show want of uniformity.

10. If the testing officer, after testing samples, considers further tests necessary to satisfy him that none of the petroleum is dangerous, he shall report to the Chief Customs-officer accordingly.

Procedure on report.

11. On receipt of a report under rule 10—

(a) when the consignment is imported in cases, the Chief Customs-officer shall cause the petroleum in question to be landed and stacked in lots of not more than fifteen hundred cases each, or to be discharged into boats each containing not more than fifteen hundred cases; and the officer referred to in rule 5 shall select and deliver to the testing officer one sample from each lot;

(b) when the consignment is imported in bulk, the Chief Customs officer shall forward a second sample and, until receipt of the testing officer's further report, may prevent the landing of any portion of the contents of the tank in question, or may permit it to be landed as provided in rule 18;

(c) if the petroleum has been already landed and stored under rule 18, it shall be divided into lots, and samples of each lot shall be selected as aforesaid.

Report of testing officer.

12. The testing officer shall, as soon as practicable, and ordinarily within twenty-four hours after receipt of any samples, sign a report certifying that they are, or are not, dangerous petroleum, as the case may be, and shall forward such report to the office of the Chief Customs-officer, where it shall be deposited.

Fee for testing.

13. The fee for testing each sample shall be five rupees:

Provided that the total amount of the fees chargeable under this rule shall not, in the case of any one ship, exceed Rs. 50.

When a ship carrying petroleum may anchor at ordinary anchorage.

14. A ship may proceed to the usual anchorage in any port specified in rule 1 and there discharge any certificated petroleum not exceeding five thousand gallons in quantity:

Provided that the officer whose duty it is, under rule 5, to select samples of petroleum on board, may at any time take a sample of any such petroleum for the purpose of having it tested.

Exception in respect of petroleum declared dangerous which is not in excess of forty gallons.

15. If the quantity of petroleum declared dangerous on board a ship does not exceed forty gallons and there is no other petroleum on board, or the aggregate quantity of petroleum on board, including petroleum declared dangerous, does not exceed forty gallons, the said petroleum may be forthwith landed.

16. Save as provided in rules 14 and 24, every ship having petroleum on board shall be anchored at such anchorage as the Conservator of the port shall appoint in this behalf, and shall not, except for the purpose of discharge of bulk oil petroleum as laid down in rule 19, leave such anchorage until so much of the petroleum as it is intended to land at that port has been discharged.

When a ship carrying petroleum must anchor at a special anchorage.

Such anchorage shall in no case be the same as for that for vessels laden with explosives, and shall be sufficiently far removed from the anchorage for vessels laden with explosives to prevent the possibility of a fire originating at the former place affecting vessels anchored at the latter.

Petroleum referred to in rule 16 not to be landed until it has been tested.

17. Save as provided in rule 18, no petroleum shall be landed from any ship referred to in rule 16 until the testing officer's report in respect thereof has been received in the office of the Chief Customs-officer.

Landing of petroleum in anticipation of the testing officer's report.

18. (1) The Chief Customs-officer may in anticipation of the testing officer's report, allow the consignee of any petroleum to discharge the same into boats or to land it.

(2) Such permission shall be subject to the condition that the boats into which the petroleum is discharged shall remain at such place as may be directed by the Chief Customs-officer, or that the petroleum shall be landed at a landing-place duly appointed for this purpose by the aforesaid officer, and be stored in an installation licensed under rule 13 or 14 of Chapter IV, Part II.

Landing of petroleum in bulk.

19. When petroleum is imported in bulk, its removal from the ship shall be effected by means of a house and a metal pipe and it shall be pumped into storage-tanks. The discharge shall be continuous day and night, until completed, weather and appliances permitting. When working at night, electric light only shall be used ; and, when the ship has finished discharging, the pipe to the storage-tanks shall immediately be emptied by means of a supplementary pump on shore. If for any cause the discharge of petroleum is at any time suspended, arrangements must be made by means of a valve for effectually preventing any of the oil left in the pipe from escaping.

Landing of petroleum otherwise than in bulk.

20. When petroleum imported otherwise than in bulk is landed within the port—

(1) it shall be landed either at jetties provided for the purpose, or in cargo-boats, and, except where electric light is exclusively used, only after sunrise and before sunset, and only at such place or places as the Conservator of the port shall direct, subject to any customs notification that may, for the time being, be in force ;

(2) dangerous and non-dangerous petroleum shall not be conveyed to the shore at the same time on the same cargo-boat ;

(3) no smoking, fire or light of any description (other than lights required by the port or harbour rules), shall be allowed in any cargo-boat during the time that the petroleum is on board the boat.

Transhipment of petroleum.

21. Petroleum may be transhipped from one ship to another for conveyance to any other port, whether within or beyond the limits of British India :

Provided that—

(*a*) the petroleum shall not be transhipped between sunset and sunrise except when electric light is exclusively used,

(*b*) dangerous and non-dangerous petroleum shall not be conveyed at the same time on any boat which is used for transhipping the petroleum, and

(*c*) no smoking, fire or light of any description (other than lights required by the port or harbour rules), shall be allowed on any boat which is being used for transhipping the petroleum from the one ship to the other.

Import-licenses how obtainable.

22. (1) Applications for import licenses under section 5 of the Act shall be submitted to the officer appointed by the Governor in Council in this behalf, who will, after enquiry, forward the same with his opinion to the Governor in Council.

(2) If the application is granted, a license in Form M, signed by a Secretary to Government, shall be forwarded to the applicant through the officer to whom his application was submitted. The license may be granted for a period of twelve months.

Petroleum comprised in ship's stores.

23. Nothing in the foregoing rules in this Part applies to petroleum, other than dangerous petroleum, comprised in a ship's stores and manifested as such, provided it is not of unreasonably large amount. If any question arises as to whether any petroleum manifested as ship's stores is of an unreasonably large amount, the decision thereon of the Chief Custom-officer shall be final.

Petroleum having a flashing point above 150°.

24. Nothing in the foregoing rules in this Part applies to petroleum which has a flashing point above 150° of Fahrenheit's thermometer. If the master of, or agent for, a ship certifies in writing that any petroleum on board is of this description, the Chief Customs-officer shall allow it to be discharged in the same manner as ordinary cargo ; but the Commissioner of Police or District Magistrate, as the case may be, may at any time require a sample of any portion of it to be delivered to him, with a view to having it tested.

FORM A.

(RULE 2 OF CHAPTER IV OF PART II.)

License to possess petroleum (other than dangerous petroleum), otherwise than in bulk.

No. Fee Rs.

LICENSE is hereby granted to for the storage in the storage shed described below, of gallons of petroleum, subject to the rules for the storage of petroleum published in Notification No. 441, dated 24th July 1909, and to the further conditions on the back of this license.

District Magistrate, or President,
Corporation of Madras, or authority
appointed under rule 2 of Chapter III of Part II.

The 190 .

[Description of the storage shed above referred to.]

ENDORSEMENT ON FORM A.

Conditions of the License.

1. If the licensing officer call on the holder of a license, by a notice in writing, to execute any repairs of the storage shed, which may, in the opinion of such officer, be necessary for the safety of the shed, the holder of the license shall execute the repairs within such period, not being less than one month from the date of receipt of the notice, as may be fixed by the notice.

2. The storage shed shall be constructed of masonry or other uninflammable material with terraced, tiled or iron roofs and with tiled or paved or earthen floors, but the beams, rafters, columns, windows and doors may be of wood.

3. Either the doorways and other openings of the storage shed shall be built up to a height of two feet above the level of the road or street, or the floor sunk to a depth of two feet below the level of the road or street, so that the petroleum cannot flow out from the building in cases of its escape from the receptacle in which it is contained, or the building itself shall be surrounded with a masonry wall or embankment or both not less than two feet high. When the quantity of petroleum stored exceeds 16,000 gallons, the height or depth shall be three feet.

A combination of these methods is permissible.

4. The following distances shall be kept clear round the building :—

Distances to be kept clear round buildings or enclosure walls.	Number of gallons to be stored.
None	5,000 and under.
20 feet	...over 5,000 and up to 50,000.
30 „	Unlimited.

5. No light, except a light of such strength, position and character as is not liable to ignite any inflammable vapour, nor fire of any description, shall be permitted within the storage shed.

FORM B.

(RULE 3 OF CHAPTER IV OF PART II.)

License to possess dangerous petroleum, otherwise than in bulk, in quantity exceeding forty gallons.

No. Fee Rs.

LICENSE is hereby granted to for the storage in the storage shed described below, of gallons of dangerous petroleum subject to the rules for the storage of petroleum published in Notification No. 441, dated 24th July 1909, and to the further conditions on the back of this license.

Secretary to the Government of Madras.

The 190 .

[Description of the storage shed above referred to.]

ENDORSEMENT ON FORM B.

Conditions of License.

1. If the licensing officer call upon the holder of a license, by notice in writing, to execute any repairs of the storage shed, which may, in the opinion of such officer, be necessary for the safety of the shed, the holder of the license shall execute the repairs within such period, not being less than one month from the date of receipt of the notice, as may be fixed by the notice.

2. The license holder is prohibited from delivering any quantity of dangerous petroleum exceeding three gallons to any one who has not a license under section 5 or section 6 of the Act, or any less quantity of such petroleum except in accordance with the conditions of the proviso to section 6 of the Act, as to the vessels in which the petroleum must be contained.

3. The petroleum shall be stored in gas-tight tinned or galvanized sheet-iron, steel, or lead plate receptacles containing each not more than forty gallons and fitted with well-made filling holes and well-fitting screw-plugs, or fitted with screw cap or other cap with metal air-tight under cap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch; provided that wood cases shall not be necessary when the receptacles are made of tinned or galvanized sheet-iron or steel, and have the following thickness of metal:—

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B.W.G.
(2) When the capacity exceeds 2 gallons but does not exceed 4 gallons	22 B. W. G.
(3) When the capacity exceeds 4 gallons but does not exceed 8 gallons	20 B. W. G.
(4) When the capacity exceeds 8 gallons but does not exceed 20 gallons	16 B. W. G.
(5) When the capacity exceeds 20 but dees not exceed 30 gallons	14 B. W. G.
(6) When the capacity exceeds 30 but does not exceed 40 gallons	12 B. W. G.

4. An air-space of at least one-tenth of its capacity shall be left in each receptacle at the time of filling.

5. The receptacle shall be so substantially constructed and secured as not to be liable except, under circumstances of grave negligence or extraordinary accident, to be broken or become defective, leaky or insecure.

6. The receptacles shall be labelled in accordance with the provisions of section 7 of the Act.

7. Any receptacle, before being repaired, shall be cleared of all dangerous petroleum and of all dangerous vapours arising from the same.

8. The storage shed shall be constructed of masonry or other uninflammable material with terraced, tiled or iron roofs and with tiled or paved or earthen floors.

9. Either the doorways and other openings of the storage shed shall be built up to a height of two feet above the level of the road or street, or the floor sunk to a depth of two feet below the level of the road or street, so that the petroleum cannot flow out from the building in case of its escape from the receptacle in which it is contained, or the building itself shall be surrounded with a masonry wall or embankment or both not less than two feet high. When the quantity of petroleum stored exceeds 16,000 gallons, the height or depth shall be three feet.

A combination of these methods is permissible.

10. All ventilating openings in the storage shed shall be protected by strong wire-gauze.

11. No light, except a light of such strength, position and character as is not liable to ignite any inflammable vapour, nor fire of any description, shall be permitted at any time within the storage shed.

12. All due precautions shall be taken for the prevention of unauthorized persons having access to any dangerous petroleum kept and to the vessels containing or having actually contained the same.

13. Every person managing or employed on or in connection with the storage shed shall abstain from any act whatever which tends to cause fire or explosion and which is not reasonably necessary, and shall prevent any other person from doing such act.

14. The drum or other receptacle containing dangerous petroleum shall only be opened on the licensed premises at or immediately adjoining the storage shed and for the time necessary for drawing off the petroleum, and during such drawing off every reasonable precaution shall be adopted for preventing the escape of dangerous petroleum or the vapour therefrom.

15. The following distances shall be kept clear from protected works round the storage shed :—

Quantity to be stored.	Distances to be kept clear.
Not exceeding 500 gallons	20 feet.
From 500 to 1,000 „	25 „
„ 1,000 to 5,000 „	30 „
„ 5,000 to 15,000 „	40 „
„ 15,000 to 25,000 „	50 „
„ 25,000 to 35,000 „	60 „
„ 35,000 to 50,000 „	70 „
„ 50,000 and over „	100 „

Provided that these distances may be reduced by the Local Government on the recommendation of the Chief Inspector of Explosives in cases where screen walls are provided or other special precautions taken, or where there are special circumstances that in the opinion of the Chief Inspector of Explosives warrant the reduction.

16. Provided that when the quantity to be possessed does not exceed 60 gallons the provisions of conditions 8, 9 and 15 shall not apply, but the licensee shall observe the following conditions :—

(i) The storage shed in which the dangerous petroleum is stored shall be well ventilated and constructed of uninflammable material, provided however that the doors and windows may be of wood.

(ii) Where a storage shed forms part of or is attached to another building and when the intervening floor or partition is of an unsubstantial or inflammable character or has openings therein, the whole of such building shall be deemed to be the storage shed and no portion of such storage shed shall be used as a dwelling house or as a place where persons assemble. The storage shed shall have a separate entrance from the open air distinct from any building or dwelling in which persons assemble.

17. The storage shed shall be liable to inspection by an officer not being of lower rank than an Inspector of Police authorised by the Governor in Council in this behalf.

FORM C.

(RULE 4 OF CHAPTER IV OF PART II.)

License to possess dangerous petroleum in quantity not exceeding forty gallons.

No. Fee Rs. 3.

LICENSE is hereby granted to for the storage, in the storage shed described below, of gallons of dangerous petroleum, subject to the rules for the storage of petroleum published in Notification No. 441, dated 24th July 1909, and to the further conditions on the back of this license.

District Magistrate or President,
Corporation of Madras, or authority appointed
under rule 2 of Chapter III of Part II.

The *190* .

[Description of the storage shed above referred to.]

ENDORSEMENT ON FORM C.

Conditions of License.

1. If the licensing officer call upon the holder of a license, by notice in writing, to execute any repairs of the storage shed, which may, in the opinion of such officer, be necessary for the safety of the shed, the holder of the license shall execute the repairs within such period, not being less than one month from the date of receipt of the notice, as may be fixed by the notice.

2. The license-holder is prohibited from delivering any quantity of dangerous petroleum exceeding three gallons to any one who has not a license under section 5 or section 6 of the Act, or any less quantity of such petroleum, except in accordance with the conditions of the proviso to section 6 of the Act, as to the vessels in which the petroleum must be contained.

3. The petroleum shall be stored in gas-tight tinned or galvanized sheet-iron, steel or lead plate receptacles containing each not more than ten gallons and fitted with well-made filling holes and well-fitting screw plugs, or fitted with screw cap or other cap with metal air-tight under cap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch ; provided that wood cases shall not be necessary when the receptacles are made of tinned or galvanized sheet-iron or steel, and have the following thickness of metal :—

	Not less than.
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 gallons but does not exceed 4 gallons	22 B. W. G.
(3) When the capacity exceeds 4 gallons but does not exceed 8 gallons	20 B. W. G.
(4) When the capacity exceeds 8 gallons	16 B. W. G.

4. An air-space of at least one-tenth of its capacity shall be left in each receptacle at the time of filling.

5. Receptacles shall be so substantially constructed and secured as not to be liable, except under circumstances of grave negligence or extraordinary accident, to be broken or become defective, leaky or insecure.

6. The receptacles shall be labelled in accordance with the provisions of section 7 of the Act.

7. Any receptacle, before being repaired, shall be cleared of all dangerous petroleum and of all dangerous vapours arising from the same.

8. The storage shed in which the dangerous petroleum is stored shall be well ventilated and constructed of uninflammable material ; provided, however, that the doors and windows may be of wood.

9. All ventilating openings in the storage shed shall be protected by strong wire gauze.

10. No light, except a light of such strength, position and character as is not liable to ignite any inflammable vapour, nor fire of any description, shall be permitted at any time within the storage shed.

11. All due precautions shall be taken for the prevention of unauthorised persons having access to any dangerous petroleum kept and to the vessels containing or having actually contained the same.

12. Every person managing or employed on or in connection with the storage shed shall abstain from any act whatever which tends to cause fire or explosion and which is not reasonably necessary and shall prevent any other person from doing such act.

13. The drum or other receptacle containing dangerous petroleum shall only be opened on the licensed premises at or immediately adjoining the storage shed and for the time necessary for drawing off the petroleum, and during such drawing off every reasonable precaution shall be adopted for preventing the escape of dangerous petroleum or the vapour therefrom.

14. Where a storage shed forms a part of or is attached to another building, and where the intervening floor or partition is of an unsubstantial or inflammable character or has openings therein, the whole of such building shall be deemed to be the storage shed and no portion of such storage shed shall be used as a dwelling or as a place where persons assemble. The storage shed shall have a separate entrance from the open air distinct from any building or dwelling in which persons assemble.

15. The storage shed shall be liable to inspection by an officer not being of lower rank than an Inspector of Police, authorized by the Governor in Council in this behalf.

FORM D.

(RULE 7 OF CHAPTER IV OF PART II.)

License to possess petroleum, not being dangerous petroleum, in a major installation.

No. Fee Rs.

LICENSE is hereby granted to for the storage, in the place described below, of gallons of petroleum, not being dangerous petroleum, subject to the rules for the storage of petroleum published in Notification No. 441, dated 24th July 1909, and to the further conditions on the back of this license.

Secretary to the Government of Madras.

The *190* .

[Description of the place above referred to.]

ENDORSEMENT FORM D.

Conditions of License.

1. Each tank shall either be separately surrounded by a wall or embankment of substantial construction, or shall be partially sunk in an excavation. The inclosure thus formed shall be of dimensions sufficient to contain 10 per cent. more oil than the tank is capable of containing, and shall be so constructed as to prevent the escape therefrom of any oil in the form of liquid, whether under the action of fire or otherwise. Settling or measuring tanks* may be situated within the wall or excavation but otherwise the space enclosed by such wall or excavation, and not occupied by the tank, shall be kept entirely clear and unoccupied.

2. In the case of all storage sheds within the installation, either the doorways and other openings of the building shall be built up to a height of three feet above the level of the ground outside it, or the floor shall be sunk to a depth of three feet below the level of the ground, or the building itself shall be surrounded with a masonry wall or embankment or both not less than three feet high.

3. The height of any storage tank shall not be more than three-fifths of its diameter.

* These tanks shall not have a greater capacity than 30,000 gallons.

4. A distance of not less than one hundred feet shall be kept clear between one storage tank and another, or between a storage tank and a storage shed, the distance being measured between the nearest points of the perimeters of the storage tanks or storage sheds, as the case may be.

5. A distance of not less than one hundred and fifty feet shall be kept clear between any storage tank or shed and any protected work.

6. The distances specified in conditions 4 and 5 may be reduced by the Governor in Council on the recommendation of the Chief Inspector of Explosives in cases where screen walls are provided, or other special precautions taken or where there are special circumstances that, in the opinion of the Chief Inspector of Explosives, warrant the reduction.

7. No fire or lights other than those necessary for soldiering purposes, shall be permitted within the installation except in the office, living quarters, engine room, boiler house and smithy.

FORM E.

(RULE 8 OF CHAPTER IV OF PART II.)

License to possess petroleum, not being dangerous petroleum, in a minor installation,

No. Fee Rs.

LICENSE is hereby granted to for the storage, in the place described below, of gallons of petroleum, not being dangerous petroleum, subject to the rules for the storage of petroleum published in Notification No. 441, dated 24th July 1909, and to the further conditions on the back of this license.

District Magistrate or President,
Corporation of Madras, or authority appointed
under rule 2 of Chapter III of Part II.

The *190* .

[Description of the place referred to.]

ENDORSEMENT ON FORM E.

Conditions of License.

1. Every tank of which the capacity exceeds fifteen thousand gallons shall either be separately surrounded by a wall or embankment of substantial construction, or shall be sunk in an excavation. The enclosure thus formed shall be of dimensions sufficient to contain the total quantity of oil capable of being contained in the tank and shall be so constructed as to prevent the escape therefrom of any oil in the form of liquid, whether under the action of fire or otherwise. The space enclosed by such wall or excavation and not occupied by the tanks, shall be kept entirely clear and unoccupied.

2. The distance to be kept clear between a tank and the walls or embankments which surround it shall be, measuring from the ground level—

(*a*) for horizontal tanks, not less than one-third the height of the tank;

(*b*) for perpendicular tanks, not less than one-half the height of the tank.

3. The height of walls or embankments surrounding the installation shall be not less than two feet six inches from the ground level.

4. The following distances shall be kept clear between protected works not formin part of the installation and the enclosure walls or embankments :—

Where the number of gallons stored is—	Distance to be kept clear.
5,000 and under	Not less than 15 feet.
Over 5,000 and up to 20,000	Do. 20 ,,
Over 20,000 and up to 50,000	Do. 30 ,,

Provided that these distances may be reduced by the Governor in Council on the recommendation of the Chief Inspector of Explosives in cases where screen walls are provided or other special precautions taken, or where there are special circumstances which in the opinion of the Chief Inspector of Explosives warrant the reduction.

5. Soldering shall only be permitted in a separate room or building placed as far from the tanks as can be conveniently arranged, in which no storage or filling shall be permitted. No more tins shall be allowed in the soldering room at any one time than are necessary for expeditious working.

6. No fire or lights, except those necessary in the soldering room and watchman's house, shall be permitted.

7. If the installation contains tanks of which the capacity does not exceed fifteen thousand gallons; either—

(*a*) each tank shall be separately enclosed in the manner prescribed in condition 1, or

(*b*) the entire installation shall be surrounded by a masonry wall or embankment or a combination of these forming an enclosure of dimensions sufficient to contain, and prevent the overflow of, all the oil that may be stored at any one time within such walls or embankments.

8. In the case of all storage sheds within an installation, which is not surrounded by a masonry wall or embankment as provided in clause (*b*) of condition 7, either the doorways and other openings of the buildings shall be built up to a height of two feet above the level of the ground outside it, or the floor sunk to a depth of two feet below the level of the ground, so that the petroleum cann ot flow out from the building in case of its escape from the receptacle in which it is contained or the building itself shall be surrounded with a masonry wall or embankment or both not less than two feet high. When the quantity of petroleum stored exceeds 16,000 gallons, the height or depth shall be three feet.

A combination of these methods is permissible.

FORM F.

(RULE 9 OF CHAPTER IV OF PART II.)

Special license to possess and transport dangerous petroleum for owners of motor-vehicles.

No. Free of charge.

LICENSE is hereby granted to owner (or hirer) of a motor-vehicle (or vehicles) for the possession of gallons of dangerous petroleum for use therein at* and for its transport on the said motor-vehicle (or vehicles) for the purpose

* Situation and description of storage shed above referred to.

of use therein, subject to the rules for the possession and transport of dangerous petroleum published in Notification No. 441, dated 24th July 1909, and to the conditions at the back of this license.

When the quantity exceeds 40 gallons.	*Secretary to the Government of Madras, District Magistrate or President, Corporation of Madras, or authority appointed under rule 2 of Chapter III of Part II.*
When the quantity does not exceed 40 Gallons.	

The *190* .

ENDORSEMENT ON FORM F.

Conditions of the License.

1. The dangerous petroleum shall not be kept, used or transported except in gas-tight tinned or galvanized sheet iron, steel or lead plate drums or receptacles containing each not more than four gallons and fitted with well-made filling holes and well-fitting screw-plugs, or fitted with screw cap or other cap with metal air-tight under cap. Such drums or receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch. Provided that wood cases shall not be necessary when the drums or receptacles are made of tinned or galvanized sheet iron, or steel, and have the following thickness of metal :—

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 gallons	22 B. W. G.

2. The drums or receptacles shall be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure.

3. Every such vessel, not forming part of a motor-vehicle, when used for transporting or keeping dangerous petroleum, shall bear the words " Dangerous Petroleum—Highly inflammable " legibly and indelibly stamped or marked thereon, or on a metallic or enamelled label attached thereto.

4. An air-space of at least one-tenth of its capacity shall be left in each drum or receptacle at the time of filling to allow for expansion of the dangerous petroleum.

5. Before repairs are done to any such vessel, that vessel shall, as far as practicable be cleaned by the removal of all dangerous petroleum and of all dangerous vapours derived from the same.

6. The storage shed in which the dangerous petroleum is stored shall be well ventilated and constructed of uninflammable materials, provided, however, that the doors and windows may be of wood.

7. Where a storage shed forms part of, or is attached to, another building, and when the intervening floor or partition is of an unsubstantial or inflammable character, or has an opening therein, the whole of such building shall be deemed to be the storage shed, and no portion of such storage shed shall be used as a dwelling, or as a place where persons assemble. A storage shed shall have a separate entrance from the open air distinct from that of any dwelling or building in which persons assemble.

8. The amount of dangerous petroleum to be kept in any one storage shed whether or not upon motor-vehicles, shall not exceed sixty gallons at any one time.

9. The filling or replenishing of any vessels with dangerous petroleum shall not be carried on, nor shall the contents of any such vessel be exposed, in the presence of fire or artificial light, except a light of such construction, position and character as not to be liable to ignite any inflammable vapour, and no artificial light shall be brought within dangerous proximity of the place where any vessel containing dangerous petroleum is being kept.

10. In the case of all dangerous petroleum kept or transported for the purpose of, or in connection with any motor-vehicle, (*a*) all due precautions shall be taken for the prevention of accidents by fire or explosion and for the prevention of unauthorized persons having access to any dangerous petroleum kept or transported and to the vessels containing, or having actually contained, the same, and (*b*) every person managing or employed on or in connection with any motor-vehicle shall abstain from every act whatever, which tends to cause fire or explosion, and which is not reasonably necessary, and shall prevent any other person from committing such act.

11. The storage shed shall be liable to inspection by an officer not being of lower rank than an Inspector of Police, authorised by the Governor in Council in this behalf.

FORM G.

(RULE I OF CHAPTER V OF PART II.)

General license to transport petroleum other than dangerous petroleum.

No. Fee Rs. 100.

A GENERAL license is hereby granted to to transport petroleum, other than dangerous petroleum, subject to the rules contained in Chapter V of Part II of Judicial Notification No. 441, dated 24th July 1909, and to the condition at the back of this license.

This license shall continue in force till the .

District Magistrate or President, Corporation of Madras, or other authority appointed under rule 2 of Chapter III of Part II.

The *190* .

ENDORSEMENT ON FORM G.

Condition of the License.

The petroleum, if not in bulk, shall be packed in air-tight tins or drums of steel or iron, or other receptacles not easily broken or in tank-carts of a pattern approved by the Governor in Council in this behalf, or in bottles securely stoppered and carefully packed so as to avoid risk of breakage.

FORM H.

(RULE 2 OF CHAPTER V OF PART II.)

General license to transport dangerous petroleum otherwise than in bulk.

No. Fee Rs. 50.

A GENERAL license is hereby granted to to transport dangerous petroleum otherwise than in bulk, subject to the rules contained in Chapter V of Part II of Judicial Notification No. 441, dated 24th July 1909, and to the further conditions on the back of this license.

This license shall continue in force till the day of .

When the quantity to be transported at a time exceeds 40 gallons. *Secretary to the Government of Madras.*

When the quantity to be transported at a time does not exceed 40 gallons. *District Magistrate, or the President, Corporation of Madras, or other authority appointed under rule 2 of Chapter III of Part II.*

The . . *190* .

ENDORSEMENT ON FORM H.

Conditions of License.

1. The petroleum must be contained in gas-tight tinned or galvanized sheet-iron, steel, or lead plate receptacles containing each not more than forty gallons and fitted with well-made filling holes and well-fitting screw-plugs, or with screw cap or other cap with metal air-tight under cap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch:

Provided that wooden cases shall not be necessary where the receptacles are made of tinned or galvanized sheet-iron or steel, and have the following thickness of metal:—

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 but does not exceed 4 gallons	22 B. W. G.
(3) When the capacity exceeds 4 but does not exceed 8 gallons	20 B. W. G.
(4) When the capacity exceeds 8 but does not exceed 20 gallons	16 B. W. G.
(5) When the capacity exceds 20, but does not exceed 30 gallons	14 B. W. G.
(6) When the capacity exceeds 30, but does not exceed 40 gallons	12 B. W. G.

2. An air-space of at least one-tenth of its capacity must be left in each receptacle at the time of filling.

3. The receptacles must be so substantially constructed and secured as to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit.

4. The nature of the contents and the words "Highly inflammable" must be distinctly marked on the receptacles.

FORM I.

(RULE 4 OF CHAPTER V, PART II.)

PASS to be granted by the holder of General license No. for the transport of $\frac{\text{dangerous}}{\text{non-dangerous.}}$ petroleum $\frac{\text{otherwise than in bulk}}{\text{in bulk or otherwise than in bulk}}$ subject to the rules contained in Chapter V of Part II of Judicial Notification No. 441, dated 24th July 1909, and to the further conditions on the back of this pass.

*To be omitted when the petroleum is transported in bulk.

This pass covers ($\frac{\text{drums}}{\text{tins}}$ $\frac{\text{cases}}{\text{packages}}$ containing*)

gallons of $\frac{\text{dangerous}}{\text{non-dangerous.}}$ petroleum being the property of while in transport from to .

The *190* . *Holder of General License No.*

ENDORSEMENT ON FORM I.

Conditions of Pass.

I.—For dangerous petroleum in the case of the holder of a license in Form H.

1. The petroleum must be contained in gas-tight tinned or galvanized sheet iron, steel, or lead plate receptacles containing each not more than forty gallons and fitted with well-made filling holes and well-fitting screw-plugs, or with screw cap or other cap with metal air-tight undercap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch :

Provided that wooden cases shall not be necessary where the receptacles are made of tinned or galvanised sheet iron or steel, and have the following thickness of metal :

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B.W.G.
(2) When the capacity exceeds 2 but does not exceed 4 gallons	22 B.W.G.
(3) When the capacity exceeds 4 but does not exceed 8 gallons	20 B.W.G.
(4) When the capacity exceeds 8 but does not exceed 20 gallons	16 B.W.G.
(5) When the capacity exceeds 20 but does not exceed 30 gallons	14 B.W.G.
(6) When the capacity exceeds 30 but does not exceed 40 gallons	12 B.W.G.

2. An air-space of at least one-tenth of its capacity must be left in each receptacle at the time of filling.

3. The receptacles must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit.

4. The nature of the contents and the words "Highly inflammable" must be distinctly marked on the receptacles.

II.—For dangerous petroleum in the case of the holder of a license in Form L.

1. The quantity of dangerous petroleum to be transported under this pass shall not exceed 60 gallons.

2. The petroleum must be contained in gas-tight tinned or galvanized sheet iron, steel, or lead plate receptacles containing each not more than four gallons and fitted with well-made filling holes and well-fitting screw-plugs, or with screw cap or other cap with metal air-tight undercap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch :

Provided that wooden cases shall not be necessary where the receptacles are made of tinned or galvanized sheet iron or steel and have the following thickness of metal :

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B.W.G.
(2) When the capacity exceeds 2 gallons	22 B.W.G.

3. An air-space of at least one-tenth of its capacity must be left in each receptacle at the time of filling.

4. The receptacles must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit.

5. The nature of the contents and the words "Highly inflammable" must be distinctly marked on the receptacles.

III.—For petroleum other than dangerous petroleum.

The petroleum, if not in bulk, shall be packed in air-tight tins or drums of steel or iron, or other receptacles not easily broken, or in tank-carts of a pattern approved by the Governor in Council in this behalf, or in bottles securely stoppered and carefully packed so as to avoid risk of breakage.

FORM J.

(RULE 5 OF CHAPTER V OF PART II.)

Special license to transport petroleum other than dangerous petrolum.

No. Fee Rs.

LICENSE is hereby granted to to transport from to * (cases or packages containing)* gallons of petroleum subject to the rules contained in Chapter V of Part II of Judicial Notification No. 441, dated 24th July 1909, and to the further condition on the back of this license.

*To be omitted when the petroleum is transported in bulk.

The license shall continue in force till the day of .

District Magistrate, or President, Corporation of Madras, or authority appointed under rule 2 of Chapter III of Part II.

The 190 .

ENDORSEMENT ON FORM J.

Condition of the License.

The petroleum, if not in bulk, shall be packed in air-tight tins or drums of steel or iron or other receptacles not easily broken, or in tank-carts of a pattern approved by the Governor in Council in this behalf, or in bottles securely stoppered and carefully packed so as to avoid risk of breakage.

FORM K.

RULE 6 OF CHAPTER V OF PART II.

Special license to transport dangerous petroleum.

No. Fee Rs.

LICENSE is hereby granted to of to transport cases or packages containing in all gallons of dangerous petroleum from to subject to the rules contained in Chapter V of Part II of Judicial Notification No. 441, dated 24th July 1909, and to the further conditions on the back of this license.

The amount of petroleum in each case or package is stated below.

This license shall continue in force till the day of .

Secretary to the Government of Madras.

When the quantity exceeds 40 gallons.

When the quantity does not exceed 40 gallons.

District Magistrate, or President, Corporation of Madras, or authority appointed under rule 2 of Chapter III of Part II.

The 190 .

ENDORSEMENT ON FORM K.

Conditions of License.

1. The petroleum must be contained in gas-tight tinned or galvanized sheet iron, or lead plate receptacles containing each not more than forty gallons and fitted with well-made filling holes and well-fitting screw-plugs, or with screw cap or other cap with metal air-tight undercap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch :

Provided that wooden cases shall not be necessary where the receptacles are made of tinned, or galvanized sheet iron or steel, and have the following thickness of metal:

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B.W.G.
(2) When the capacity exceeds 2 but does not exceed 4 gallons	22 B.W.G.
(3) When the capacity exceeds 4 but does not exceed 8 gallons	20 B.W.G.
(4) When the capacity exceeds 8 but does not exceed 20 gallons	16 B.W.G.
(5) When the capacity exceeds twenty but does not exceed 30 gallons	14 B.W.G.
(6) When the capacity exceeds thirty but does not exceed 40 gallons	12 B.W.G.

2. An air-space of at least one-tenth of its capacity must be left in each receptacle at the time of filling.

3. The receptacles must be so substantially constructed and secured as not to be liable. except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit.

4. The nature of the contents and the words " Highly inflammable" must be distinctly marked on the receptacles.

FORM L.

(RULE 9 OF CHAPTER V OF PART II.)

General license to the owner of a motor-vehicle to transport dangerous petroleum otherwise than on a motor-vechicle.

No. Fee Rs. 5.

A GENERAL license is hereby granted to to transport dangerous petroleum, otherwise than in bulk, up to $\frac{40}{60}$ gallons at a time, subject to the rules contained in Chapter V of Part II of Judicial Notification No. 441, dated 24th July 1909, and to the further conditions on the back of this license.

This license shall continue in force till the

When the quantity exceeds 40 gallons. *Secretary to the Government of Madras.*

When the quantity does not exceed 40 gallons. *District Magistrate, or President, Corporation of Madras, or authority appointed under rule 2 of Chapter III of Part II.*

The

ENDORSEMENT ON FORM L.

Conditions of License.

1. The petroleum must be contained in gas-tight tinned or galvanized sheet iron, steel, lead plate receptacles containing each not more than four gallons and fitted with well-made filling holes and well-fitting screw-plugs, or with screw cap or other cap with metal air-tight undercap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch :

Provided that wooden cases shall not be necessary where the receptacles are made of tinned or galvanized sheet iron or steel and have the following thickness of metal :

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B.W.G.
(2) When the capacity exceeds 2 gallons	22 B.W.G.

2. An air-space of at least one-tenth of its capacity must be left in each receptacle at the time of filling.

3. The receptacles must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit.

4. The nature of the contents and the words "Highly inflammable" must be distinctly marked on the receptacles.

FORM M.

[RULE 22 (2) OF PART III.]

General license to import dangerous petroleum in quantities exceeding 40 gallons.

A GENERAL license is hereby granted to to import dangerous petroleum at the port of
subject to the rules contained in Part III of Judicial Notification No. 441, dated 24th July 1909, and to the further conditions on the back of this license.

This license shall continue in force till the .

Secretary to the Government of Madras,

The *190* .

ENDORSEMENT ON FORM M.

Conditions of License.

1. Dangerous petroleum shall be imported in gas-tight tinned or galvanized sheet iron, steel, or lead plate receptacles containing each not more than forty gallons and fitted with well-made filling holes and well-fitting screw-plugs, or with screw cap or other cap with metal air-tight undercap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch :

Provided that wooden cases shall not be necessary where the receptacles are made of tinned or galvanized sheet iron or steel and have the following thickness of metal.

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B.W.G.
(2) When the capacity exceeds 2 but does not exceed 4 gallons	22 B.W.G.
(3) When the capacity exceeds 4 but does not exceed 8 gallons	20 B.W.G.
(4) When the capacity exceeds 8 but does not exceed 20 gallons	16 B.W.G.
(5) When the capacity exceeds 20 but does not exceed 30 gallons	14 B.W.G.
(6) When the capacity exceeds 30 but does not exceed 40 gallons	12 B.W.G.

2. An air-space of at least one-tenth of its capacity shall be left in each receptacle at the time of filling.

3. The receptacles must be so substantially constructed and secured as not to be liable; except under circumstances of gross negligence or extraordinary accident to be broken or become defective, leaky or insecure in transit.

APPENDIX D.

CENTRAL PROVINCES.

(See Central Provinces Gazette, May 15, 1909, Part I, pp. 290—305.)

No. 863—In exercise of the powers conferred by Section 9 of the Indian Petroleum Act, 1899 (VIII of 1899), and by Section 9 of that Act, as applied to Berar under Government of India, Foreign Department Notification No. 3034-I. B., dated the 13th July 1900, and with the previous sanction of the Governor General in Council, the Chief Commissioner is pleased to make the following rules in supersession of those published under Notification Nos. 5732 and 767-A—VIII-2, dated the 14th May and 20th October 1906 respectively, to regulate the grant of licenses to possess and transport petroleum in the Central Provinces and Berar.

RULES UNDER SECTION 9 OF THE INDIAN PETROLEUM ACT, 1899, FOR THE POSSESSION AND TRANSPORT OF PETROLEUM IN THE CENTRAL PROVINCES AND BERAR.

PART 1.

PRELIMINARY.

Definitions. 1. In these rules,—

(*a*) "Part" means a part of these rules:

(*b*) "certificated petroleum" means petroleum certified to be non-dangerous petroleum by a certificate of such description as the Local Government may, from time to time, by written order, prescribe, granted at the port of shipment;

(*c*) "petroleum in bulk" means petroleum in quantities exceeding five hundred gallons, contained in any one receptacle;

(*d*) "installation" means a place specially prepared for the storage of petroleum in bulk, or for bulk combined with non-bulk storage, and may be either a major or a minor installation;

(*e*) "major installation" means an installation—

(1) capable of containing an amount of oil, whether in bulk only or in combined bulk and non-bulk storage, exceeding fifty thousand gallons, or

(2) in which tin-making operations are carried on;

(*f*) "minor installation" means an installation—

(1) capable of containing an amount of oil, whether in bulk only or in combined bulk and non-bulk storage, not exceeding fifty thousand gallons; and

(2) in which no tin-making operations are carried on;

(*g*) "storage shed" means a building used for the storage of petroleum otherwise than in bulk, and may or may not form part of an installation;

(*h*) "protected works" includes buildings in which persons dwell or assemble, docks, wharves, timber yards, other petroleum stores, and any other place not forming part of an installation which the local Government may by notification declare as such;

(*i*) "testing officer" means the testing officer appointed by the Local Government under Section 10 of the Act for any port at which petroleum may be imported under these rules;

(*j*) "motor-vehicle" means any vehicle or vessel propelled by a motor, in which petroleum is used as fuel; and

(*k*) "owner," as applied to a motor-vehicle, includes a person who hires, or is otherwise entitled for the time being to use or work a motor-vehicle.

PART II.

POSSESSION AND TRANSPORT OF PETROLEUM.

CHAPTER I.—Possession of Petroleum.

Smoking prohibited.

1. No smoking shall be permitted inside any installation or storage shed.

Supervision of operations within installation or storage shed.

2. All operations within any installation or storage shed shall be conducted under the supervision of a responsible agent or supervisor.

Cleanliness of installation.

3. The ground in the interior of an installation shall be kept clean and free from goods of a combustible nature, vegetation and rubbish.

Supply of sand or dry earth in installation.

4. A supply of sand or dry earth shall always be kept in an installation for the purpose of extinguishing fire.

Marking of capacity of tanks.

5. The capacity in gallons of every tank in an installation shall be conspicuously marked on it, and shall be calculated at the rate of 6·25 gallons per cubic foot.

Protection from lightning.

6. Every tank or other receptacle for the storage of petroleum in bulk, except a tank or receptacle which is not of sufficient capacity to contain ten thousand gallons of petroleum and which is so situated as not to be liable to cause danger in the event of the petroleum being ignited, shall be protected by an efficient lightning-conductor.

Explanation—A tank or receptacle shall be deemed to be so situated as not to be liable to cause danger in the event of the petroleum being ignited, if it is not in close proximity to any other tank or receptacle, or to any building not forming part of the installation, and if it is surrounded by a wall, or embankment, or sunk in an excavation, the enclosure thus formed being sufficient to contain the whole contents of the tank or receptacle.

Testing of lightning conductor by licensee.

7. Not less than once in every year the licensee of an installation shall test or cause to be tested the efficiency of the conductor in such manner as the Chief Inspector of Explosives may, by general or special order, declare to be sufficient, and a certificate showing the date of the last test shall be posted in a conspicuous place within the installation.

Official testing of lightning-conductor.

8. Any officer appointed by the Local Government in this behalf may enter any installation for the purpose of testing the efficiency of the conductor, at any time after sunrise and before sunset.

Time for work in installations or storage sheds.

9. No installation or storage shed shall be open, and no work in any installation or storage shed shall be permitted, between sunset and sunrise: provided that in cases where electric lighting is exclusively used, night working may be permitted by the Local Government on the recommendation of the Chief Inspector of Explosives.

Closure of pipes and openings.

10. Where there are any pipes or openings for draining out water in any enclosure wall, arrangements shall be made whereby they can be closed, and they shall only be kept open when actually necessary for drainage purposes. The nature of such arrangements shall be shown in the specifications which are required under rule 10 of Chapter IV of this Part, to be submitted with the application for a license.

Material for storage sheds.

11. All storage sheds in an installation shall be built of uninflammable material.

Posting up of rules and conditions.

12. There shall be hung up in a conspicuous place in every installation and storage shed for which a license has been granted, copies in English and the vernacular, of the rules contained in this Chapter, and of the conditions endorsed on the license.

CHAPTER II.—Transport of Petroleum.

Validity of license granted in another Province.

1. Petroleum may be transported into and within the Central Provinces and Berar under cover of a license granted by the prescribed authority in any other Province of British India or in any area outside British India to which the Indian Petroleum Act, 1899, may be applied, provided that the conditions of such license are observed throughout the period during which the petroleum is in transit.

CHAPTER III.--General Provisions relating to Licenses.

Applications for licenses.

1. All applications for licenses for the possession or transport of petroleum shall be made to the District Magistrate.

Licensing authority.

2. Licenses—

(*a*) for the possession of non-dangerous petroleum, not being petroleum in bulk,

(*b*) for the possession of non-dangerous petroleum in a minor installation,

(*c*) for the possession or transport of dangerous petroleum in quantities not exceeding 40 gallons, and

(*d*) for the transport of petroleum, not being dangerous petroleum, otherwise than by a pipe line,

may be granted by a District Magistrate, or by such other authority as the Local Government may from time to time by order in writing appoint in this behalf. In all other cases the licensing authority shall be the Local Government.

Provided that in the case of renewals of existing licenses the Local Government may delegate its powers under this rule to the District Magistrate or to such other authority as the Local Government may from time to time by an order in writing appoint in this behalf.

Refusal of license.

3. The licensing authority may, for reasons to be communicated to the applicant, refuse a license in any case:

Provided that the licensing authority shall not refuse a license for the possession of petroleum in a minor installation, unless such authority has first made a reference to the Chief Inspector of Explosives and obtained his concurrence.

Forfeiture of license.

4. Every license granted under these rules shall be liable to be forfeited for any contravention of the Act, or of any rule thereunder, or of any condition contained in such license, or for any other reason deemed by the licensing authority to be good and sufficient, and recorded by him in writing.

Particulars of license.

5. Every license and pass granted under these rules shall be held subject to the conditions endorsed on it, and shall contain all the particulars which are contained in the form prescribed for it by these rules:

Provided that in the case of installations and storage sheds in existence before these rules were made, the license may contain in lieu of the particulars contained in the form prescribed for it by these rules, either such particulars as may have been entered in the license granted for such installation or storage shed under the rules heretofore in force, or such particulars as may in each case be approved by the Chief Inspector of Explosives.

Renewal of licenses.

6. (1) Every application for the renewal of a license shall be made in the same manner as an application for an original license.

(2) Every such application shall be made at a date not less than thirty days before the date on which the original license expires, and, if the application is so made, the premises shall be held to be duly licensed until such date as the licensing authority issues the renewed license or until an intimation that the renewal of the license is refused has been communicated to the applicant.

(3) The same fee shall be charged for the renewal of a license as for a new license.

Supply of rules to licensee.

7. When any license is granted for the possession or transport of petroleum, a copy of the rules contained in Chapter I of this Part in the case of a license for possession, and in Chapter II of this Part in the case of a license for transport, printed in English and the vernacular, shall be given, together with the license, to the licensee.

Procedure on death or disability of licensee.

8. Where a licensee dies or becomes insolvent or becomes mentally incapable or otherwise disabled, the person carrying on the business of such licensee shall not be liable to any penalty or forfeiture under the Act or these rules for acting under the license during such time as may reasonably be necessary to allow him to make an application for a new license in his own name for the unexpired portion of the original license.

Loss of license.

9. Where a license granted under these rules is lost or accidentally destroyed, a duplicate may be granted.

CHAPTER IV.—Licenses for the possession of Petroleum.

Continuance of license.

1. Every license for the possession of petroleum shall remain in force until the 31st of December next following the date of issue of the license.

Petroleum not in bulk other than dangerous petroleum.

2. Licenses for the possession of petroleum, not being dangerous petroleum, otherwise than in bulk, may be granted in Form A.

Dangerous petroleum not in bulk.

3. Licenses for the possession of dangerous petroleum, not in bulk, in quantity exceeding 40 gallons may be granted in Form B.

Dangerous petroleum not exceeding 40 gallons.

4. Licenses for the possession of dangerous petroleum, in quantity not exceeding 40 gallons may be granted in Form C.

Transfer of certain licenses.

5. (1) The holder of a license in Forms A, B, or C, may, at any time before the expiry of the license, apply for permission to transfer his license to another person.

(2) Such application shall be made to the District Magistrate, who shall, if he approves of the transfer, enter upon the license under his signature, an endorsement to the effect that the license has been transferred to the person named.

(3) A fee of Re. 1 shall be charged on each such application.

(4) The person to whom the license is so transferred shall enjoy the same powers and be subject to the same obligations under the license as the original holder.

Possession of dangerous petroleum in receptacles containing more than forty gallons each.

6. Special licenses for the possession of dangerous petroleum in receptacles containing more than 40 gallons, but not more than 500 gallons each may be granted on such terms as the Local Government may prescribe on the recommendation of the Chief Inspector of Explosives.

Storage in major installations.

7. Linceses for the possession of any stated quantity of petroleum not being dangerous petroleum, in major installations, in accordance with such specifications and plans as the Local Government, on the recommendation of the Chief Inspector of Explosives, may, from time to time, by general or special order, approve, may be granted in Form D.

Storage in minor installations.

8. Licenses for the possession of any stated quantity of petroleum, not being dangerous petroleum, in minor installations, in accordance, with such specifications and plans as the Chief Inspector of Explosives may, from time to time, by general or special order, approve, may be granted in Form E.

Dangerous petroleum for use on motor vehicles.

9. (1) Licenses in Form F may be granted free of charge for the possession of dangerous petroleum for use on motor-vehicles and for its transport thereon, for the purpose of use therein.

(2) The provisions of the ordinary rules relating to the possession of dangerous petroleum shall regulate the possession of dangerous petroleum for use on motor-vehicles, save in so far as these provisions are varied by the conditions of the license.

Particulars to be given in applications for licenses for the possession of petroleum other than licenses under rules 4 and 9.

10. Every application for a license for the possession of petroleum, other than licenses under rules 4 and 9 of this Chapter, shall specify:—

(*a*) the description and quantity of petroleum which the applicant desires to keep,

(*b*) the name and position of the premises intended to be used for the storage of such petroleum and whether the said premises fulfil the conditions prescribed by Form A, Form B, Form D or Form E, as the case may be,

(*c*) the amount of petroleum, if any, already licensed to be kept on the same premises.

If the application be made for the first time in respect of any major or minor installation or if the quantity of petroleum to be stored in such an installation is to be increased, the application shall be accompanied by specifications and plans drawn to scale.

Certificate of safety to be furnished.

11. Before petroleum is stored in any major or minor installation for which a license has been granted for the first time, a certificate shall be furnished to the licensing authority to the effect that all enclosure walls and embankments required to be constructed under the conditions of the license are sufficient to ensure safety. The certificate shall be signed by an engineer accepted as qualified for the purpose by the licensing authority When the license is not granted for the first time but is granted for an increased quantity of petroleum, a certificate shall similarly be furnished to the licensing authority before any quantity of petroleum exceeding the amount which was admissible under the former license is stored in the installation.

Particulars to be given in applications for licenses under rules 4 and 9.

12. Every application for a license under rules 4 and 9 of this Chapter shall specify:—

(a) whether the applicant is the owner of a motor-vehicle,

(b) the amount of dangerous petroleum the applicant desires to store,

(c) the exact position and nature of the premises intended to be used for the storage of such dangerous petroleum, and whether the said premises fulfil the conditions prescribed by Form C or Form F, as the case may be.

CHAPTER V.—Licenses for the transport of petroleum.

General licenses for the transport of non-dangerous petroleum.

1. General licenses for the transport of petroleum, other than dangerous petroleum, may be granted for a period of twelve months in form G.

General licenses for the transport of dangerous petroleum.

2. General licenses for the transport of dangerous petroleum otherwise than in bulk may be granted for a period of twelve months in Form H.

Effect of general license.

3. Licenses granted under rules 1, 2 and 9 of this Chapter may authorise the holders to transport petroleum without restriction as to destination or total quantity.

Pass for transport of petroleum.

4. The holder of a general license granted under rules 1, 2 or 9 of this Chapter shall, with each consignment of petroleum conveyed under cover of his license, issue to the person who takes charge of the petroleum for the purpose of transporting it, a numbered pass in Form I.

Special licenses for the transport of petroleum other than dangerous petroleum.

5. Special licenses may be granted for the transport of petroleum, other than dangerous petroleum, in quantity exceeding 500 gallons, in Form J.

Special licenses for the transport of dangerous petroleum.

6. Special licenses may be granted for the transport of dangerous petroleum other than in bulk in Form K.

Effect of special license.

7. A special license granted under rules 5 and 6 shall only cover the transport of the particular consignment entered in the license, and shall be valid for such period as may be entered in it.

Particulars to be given in applications for special licenses.

8. Applications for special licenses for the transport of petroleum by rail or by road or by both of these modes of conveyance, shall specify the description and quantity of petroleum to be transported and the places from and to which, respectively, the petroleum is to be conveyed, and shall describe the receptacles in which it is to be contained.

Transport of dangerous petroleum by motorists otherwise than on motor-vehicle.

9. General licenses in Form L to transport dangerous petroleum up to a maximum of sixty gallons at a time, otherwise than on a motor-vehicle, may be granted for a period of twelve months to owners of motor-vehicles holding licenses under rule 9, sub-rule (i), of Chapter IV of this Part, to possess petroleum and use or transport it on a motor-vehicle.

CHAPTER VI.—Fees.

Method of levying fees.

1. (1) Where the proceeds of fees leviable for licenses under these rules have been assigned by the Local Government to any local authority, the fees shall be levied in such manner as the local authority may from time to time direct.

(2) In all other cases the fees shall be paid in cash on receipt of a notice from the licensing authority that a license will be granted.

(3) The court-fee stamp of the value of eight annas representing the fee chargeable under schedule II, Article 1 (*b*) of the Court Fees Act on an application for a license presented to a Magistrate should be attached to the application.

Fees for licenses for possession of petroleum.

2. The following fees shall be charged for licenses for the possession of petroleum, namely :—

Non-dangerous petroleum.

	Rs.	
(*a*) When the quantity to be stored exceeds 500 but does not exceed 1,000 gallons.	12	
(*b*) When the quantity to be stored exceeds 1,000 but does not exceed 5,000 gallons.	12	for the first 1,000 gallons *plus* Rs. 2 for every additional 1,000 gallons or part thereof.
(*c*) When the quantity to be stored exceeds 5,000 gallons, but does not exceed 50,000 gallons.	20	for the first 5,000 gallons *plus* Rs. 4 for every additional 1,000 gallons or part thereof.
(*d*) When the quantity to be stored exceeds 50,000 gallons.	250	

Dangerous petroleum.

	Rs.	
(*e*) When the quantity to be stored does not exceed 40 gallons.	3	
(*f*) When the quantity to be stored exceeds 40 gallons, but does not exceed 500 gallons.	8	
(*g*) When the quantity to be stored exceeds 500 gallons.		the same fees as those laid down for non-dangerous petroleum.

Fees for licenses for transport of petroleum.

3. The following fees shall be charged for licenses for the transport of petroleum :—

Non-dangerous petroleum.

Special license—

	Re.
(*a*) When the quantity to be transported exceeds 500 but does not exceed 5,000 gallons.	1
(*b*) For every additional 5,000 gallons or part of 5,000 gallons.	1
	Rs.
General license for the transport of non-dangerous petroleum by rail or by road for twelve months.	100

Dangerous petroleum.

Special license—

	Rs.	
(*i*) When the quantity to be transported does not exceed 40 gallons.	2	
(*ii*) When the quantity to be transported exceeds 40 gallons but does not exceed 480 gallons.	2	for the first 40 gallons *plus* 8 annas for every additional 40 gallons or part thereof.
(*iii*) When the quantity to be transported exceeds 480 gallons.	8	for the first 480 gallons *plus* Rs. 2 for every additional 480 gallons or part thereof.
General license for the transport of dangerous petroleum by the owner of a motor-vehicle by road or rail up to a maximum of 60 gallons at a time.	5	
General license for the transport of dangerous petroleum by dealers by rail or road.	50	

Fee for license granted for unexpired portion of an original license.

4. A fee of one rupee shall be charged for a new license for the unexpired portion of an original license granted to any person applying for the same in accordance with the provisions of rule 8 of Chapter III of this Part.

Fee for duplicate licenses.

5. A fee of eight annas shall be charged for a duplicate of a license granted in accordance with the provisions of rule 9 of Chapter III of this Part.

FORM A.

(RULE 2 OF CHAPTER IV OF PART II.)

License to possess petroleum (other than dangerous petroleum, otherwise than in bulk.

No. Fee, Rs.

LICENSE is hereby granted to for the storage in the storage shed described below, of gallons of petroleum, subject to the rules for the storage of petroleum published in Notification No. 863, dated the 15th May 1909, and to the further conditions on the back of this license.

District Magistrate or authority appointed under rule 2 of Chapter III of Part II.

The 190 .

[Description of the storage shed above referred to.]

ENDORSEMENT ON FORM A.

Conditions of the License.

1. If the licensing officer call on the holder of a license, by a notice in writing, to execute any repairs of the storage shed, which may, in the opinion of such officer, be necessary for the safety of the shed, the holder of the license shall execute the repairs within such period, not being less than one month from the date of receipt of the notice, as may be fixed by the notice.

2. The storage shed shall be constructed of masonry or other uninflammable material with terraced, tiled or iron roofs and with tiled or paved or earthen floors, but the beams, rafters, columns, windows and doors may be of wood.

3. Either the doorways and other openings of the storage shed shall be built up to a height of two feet above the level of the road or street, or the floor sunk to a depth to two feet below the level of the road or street so that the petroleum cannot flow out from the building in case of its escape from the receptacle in which it is contained, of the building itself shall be surrounded with a masonry wall or embankment or both not less than two feet high. When the quantity of petroleum stored exceeds 16,000 gallons, the height or depth shall be 3 feet.

A combination of these methods is permissible.

4. The following distances shall be kept clear round the building :—

Distances to be kept clear round buildings or enclosure walls.	Number of gallons to be stored.
None	5,000 and under.
20 feet	over 5,000 and up to 50,000.
30 „	Unlimited.

5. No light, except a light of such strength, position and character as is not liable to ignite any inflammable vapour, nor fire of any description, shall be permitted within the storage shed.

FORM B.

(RULE 3 OF CHAPTER IV OF PART II.)

License to possess dangerous petroleum, otherwise than in bulk, in quantity exceeding forty gallons.

No. Fee Rs.

LICENSE is hereby granted to for the storage, in the storage shed described below, of gallons of dangerous petroleum, subject to the rules for the storage of petroleum published in Notification No. 863, dated the 15th May 1909, and to the further conditions on the back of this license.

Secretary to the Chief Commissioner,
Central Provinces.

The 190 .

[Description of the storage shed above referred to.]

ENDORSEMENT ON FORM B.

Conditions of License.

1. If the licensing officer call upon the holder of a license, by notice in writing, to execute any repairs of the storage shed, which may in the opinion of such officer, be necessary for the safety of the shed, the holder of the license shall execute the repairs within such period, not being less than one month from the date of receipt of the notice, as may be fixed by the notice.

2. The license-holder is prohibited from delivering any quantity of dangerous petroleum exceeding three gallons to any one who has not a license under Section 5 or Section 6 of the Act, or any less quantity of such petroleum, except in accordance with the conditions of the proviso to Section 6 of the Act, as to the vessels in which the petroleum must be contained.

3. The petroleum shall be stored in gas-tight tinned or galvanized sheet iron, steel or lead plate receptacles containing each not more than forty gallons and fitted with well-made filling holes and well-fitting screw-plugs, or fitted with screw cap or other cap with metal air-tight undercap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighth of an inch; provided that wood cases shall not be necessary when the receptacles are made of tinned or galvanized sheet iron, or steel, and have the following thickness of metal :—

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 gallons but does not exceed 4 gallons	22 B. W. G.
(3) When the capacity exceeds 4 gallons but does not exceed 8 gallons	20 B. W. G.
(4) When the capacity exceeds 8 gallons but does not exceed 20 gallons	16 B. W. G.
(5) When the capacity exceeds 20 but does not exceed 30 gallons	14 B. W. G.
(6) When the capacity exceeds 30 but does not exceed 40 gallons	12 B. W. G.

4. An air-space of at least one-tenth of its capacity shall be left in each receptacle at the time of filling.

5. The receptacles shall be so substantially constructed and secured as not to be liable except, under circumstances of grave negligence or extraordinary accident, to be broken or become defective, leaky or insecure.

6. The receptacles shall be labelled in accordance with the provisions of Section 7 of the Act.

7. Any receptacle, before being repaired, shall be cleared of all dangerous petroleum and of all dangerous vapours arising from the same.

8. The storage shed shall be constructed of masonry or other uninflammable material with terraced, tiled or iron roofs and with tiled or paved or earthen floors.

9. Either the doorways and other openings of the storage shed shall be built up to a height of two feet above the level of the road or street, on the floor sunk to a depth of two feet below the level of the road or street, so that the petroleum cannot flow out from the building in case of its escape from the receptacle in which it is contained, or the building itself shall be surrounded with a masonry wall or embankment or both not less than two feet high. When the quantity of petroleum stored exceeds 16,000 gallons, the height or depth shall be three feet.

A combination of these methods is permissible.

10. All ventilating openings in the storage shed shall be protected by strong wire-gauze.

11. No light, except a light of such strength, position and character as is not liable to ignite any inflammable vapour, nor fire of any description, shall be permitted at any time within the storage shed.

12. All due precautions shall be taken for the prevention of unauthorised persons having access to any dangerous petroleum kept and to the vessels containing or having actually contained the same.

13. Every person managing or employed on or in connection with the storage shed shall abstain from any act whatever which tends to cause fire or explosion and which is not reasonably necessary, and shall prevent any other person from doing such act.

14. The drum or other receptacle containing dangerous petroleum shall only be opened on the licensed premises at or immediately adjoining the storage shed and for the time necessary for drawing off the petroleum, and during such drawing off every reasonable precaution shall be adopted for preventing the escape of dangerous petroleum or the vapour therefrom.

15. The following distances shall be kept clear from protected works round the storage shed :—

Quantity to be stored.	Distances to be kept clear.
Not exceeding 500 gallons	20 feet.
From 500 to 1,000 „	25 „
„ 1,000 to 5,000 „	30 „
„ 5,000 to 15,000 „	40 „
„ 15,000 to 25,000 „	50 „
„ 25,000 to 35,000 „	60 „
„ 35,000 to 50,000 „	70 „
„ 50,000 and over „	100 „

Provided that these distances may be reduced by the Local Government on the recommendation of the Chief Inspector of Explosives in cases where screen walls are provided, or other special precautions taken, or where there are special circumstances that in the opinion of the Chief Inspector of Explosives warrant the reduction.

16. Provided that when the quantity to be possessed does not exceed 60 gallons the provisions of conditions 8, 9 and 15 shall not apply, but the licensee shall observe the following conditions :—

(i) The storage shed in which the dangerous petroleum is stored shall be well ventilated and constructed of uninflammable material, provided however that the doors and windows may be of wood.

(ii) Where a storage shed forms part of or is attached to another building and when the intervening floor or partition is of an unsubstantial or inflammable character or has openings therein, the whole of such building shall be deemed to be the storage shed and no portion of such storage shed shall be used as a dwelling house or as a place where persons assemble. The storage shed shall have a separate entrance from the open air distinct from any building or dwelling in which persons assemble.

17. The storage shed shall be liable to inspection by an officer not being of lower rank than an Inspector of Police authorised by the Local Government in this behalf.

FORM C.

(RULE 4 OF CHAPTER IV OF PART II.)

License to possess dangerous petroleum in quantity not exceeding forty gallons.

No. Fee, Rs. 3.

LICENSE is hereby granted to for the storage, in the storage shed described below, of gallons of dangerous petroleum, subject to the rules for the storage of petroleum published in Notification No. 863, dated the 15th May 1909, and to the further conditions on the back of this license.

District Magistrate or authority

appointed under the rule 2 of Chapter III of Part II.

The 190 .

(Description of the storage shed above referred to.)

ENDORSEMENT ON FORM C.

Conditions of License.

1. If the licensing officer call upon the holder of a license, by notice in writing, to execute any repairs of the storage shed, which may, in the opinion of such officer, be necessary for the safety of the shed, the holder of the license shall execute the repairs within such period, not being less than one month from the date of receipt of the notice, as may be fixed by the notice.

2. The license-holder is prohibited from delivering any quantity of dangerous petroleum exceeding three gallons to any one who has not a license under section 5 or section 6 of the Act, or any less quantity of such petroleum, except in accordance with the conditions of the proviso to section 6 of the Act, as to the vessels in which the petroleum must be contained.

3. The petroleum shall be stored in gas-tight tinned or galvanized sheet iron, steel or lead plate receptacles containing each not more than ten gallons and fitted with well-made filling holes and well-fitting screw-plugs, are fitted with screw-cap or other cap with metal air-tight undercap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch; provided that wooden cases shall not be necessary when the receptacles are made of tinned or galvanized sheet iron or steel, and have the following thickness of metal :—

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 gallons but does not exceed 4 gallons	22 B. W. G.
(3) When the capacity exceeds 4 gallons but does not exceed 8 gallons	20 B. W. G.
(4) When the capacity exceeds 8 gallons	16 B. W. G.

4. An air-space of at least one-tenth of its capacity shall be left in each receptacle at the time of filling.

5. Receptacles shall be so substantially constructed and secured as not to be liable, except under circumstances of grave negligence or extraordinary accident, to be broken or become defective, leaky or insecure.

6. The receptacles shall be labelled in accordance with the provisions of section 7 of the Act.

7. Any receptacle, before being repaired, shall be cleared of all dangerous petroleum and of all dangerous vapours, arising from the same.

8. The storage shed in which the dangerous petroleum is stored shall be well ventilated and constructed of uninflammable material; provided, however, that the doors and windows may be of wood.

9. All ventilating openings in the storage shed shall be protected by strong wire-gauze.

10. No light, except a light of such strength, position and character as is not liable to ignite any inflammable vapour, nor fire of any description, shall be permitted at any time within the storage shed.

11. All due precautions shall be taken for the prevention of unauthorised persons having access to any dangerous petroleum kept and to the vessels containing or having actually contained the same.

12. Every person managing or employed on or in connection with the storage shed shall abstain from any act whatever which tends to cause fire or explosion and which is not reasonably necessary and shall prevent any other person from doing such act.

13. The drum or other receptacle containing dangerous petroleum shall only be opened on the licensed premises at or immediately adjoining the storage shed and for the time necessary for drawing of the petroleum, and during such drawing off every reasonable precaution shall be adopted for preventing the escape of dangerous petroleum or the vapour therefrom.

14. Where a storage shed forms a part of or is attached to another building, and where the intervening floor or partition is of an unsubstantial or inflammable character or has openings therein, the whole of such building shall be deemed to be the storage shed and no portion of such storage shed shall be used as a dwelling or as a place where persons assemble. The storage shed shall have a separate entrance from the open air distinct from any building or dwelling in which persons assemble.

15. The storage shed shall be liable to inspection by an officer not being of lower rank than an Inspector of Police, authorised by the Local Government in this behalf.

FORM D.

(RULE 7 OF CHAPTER IV OF PART II.)

License to possess petroleum, not being dangerous petroleum, in a major installation.

No. Fee, Rs.

LICENSE is hereby granted to for the storage, in the place described below, of gallons of petroleum, not being dangerous petroleum, subject to the rules for the storage of petroleum published in Notification No. 863, dated the 15th May 1909, and to the further conditions on the back of this license.

Secretary to the Chief Commissioner,
Central Provinces.

The *190* .

(Description of the place above referred to.)

ENDORSEMENT ON FORM D.

Conditions of License.

1. Each tank shall either be separately surrounded by a wall or enbankment of substantial construction, or shall be partially sunk in an excavation. The inclosure thus formed shall be of dimensions sufficient to contain 10 per cent. more oil than the tank is capable of containing, and shall be so constructed as to prevent the escape therefrom of any oil in the form of liquid, whether under the action of fire or otherwise. Settling or measuring tanks* may be situated within the wall or excavation but otherwise the space enclosed by such wall or excavation, and not occupied by the tank, shall be kept entirely clear and unoccupied.

2. In the case of all storage sheds within the installation, either the doorways and other openings of the buildings shall be built up to a height of three feet above the level of the ground outside it, or the floor shall be sunk to a depth of three feet below the level of the ground, or the building itself shall be surrounded with a masonry wall or embankment or both not less than three feet high.

3. The height of any storage tank shall not be more than three-fifths of its diameter.

* These tanks shall not have a greater capacity than 30,000 gallons.

4. A distance of not less than one hundred feet shall be kept clear between one storage tank and another, or between a storage tank and storage shed, the distance being measured between the nearest points of the perimaters of the storage tanks or storage sheds, as the case may be.

5. A distance of not less than one hundred and fifty feet shall be kept clear between any storage tank or shed and any protected work.

6. The distances specified in conditions 4 and 5 may be reduced by the Local Government on the recommendation of the Chief Inspector of Explosives in cases where screen walls are provided, or other special precautions taken or where there are special circumstances that, in the opinion of the Chief Inspector of Explosives, warrant the reduction.

7. No fire or lights other than those necessary for soldering purposes, shall be permitted within the installation except in the office, living quarters, engine room, boiler house and smithy.

FORM E.

(RULE 8 OF CHAPTER IV OF PART II.)

License to possess petroleum, not being dangerous petroleum, in a minor installation.

No. Fee, Rs.

LICENSE is hereby granted to for the storage, in the place described below, of gallons of petroleum, not being dangerous petroleum, subject to the rules for the storage of petroleum published in Notification No. 863, dated 15th May 1909, and to the further conditions on the back of this license.

District Magistrate or authority appointed under rule 2 of Chapter III of Part II.

The *190* .

(Description of the place referred to.)

ENDORSEMENT ON FORM E.

Conditions of License.

1. Every tank of which the capacity exceeds fifteen thousand gallons shall either be separately surrounded by a wall or embankment of substantial construction, or shall be sunk in an excavation. The enclosure thus formed shall be of dimensions sufficient to contain the total quantity of oil capable of being contained in the tank and shall be so constructed as to prevent the escape therefrom of any oil in the form of liquid, whether under the action of fire or otherwise. The space enclosed by such wall or excavation and not occupied by the tanks, shall be kept entirely clear and unoccupied.

2. The distance to be kept clear between a tank and the walls or embankments which surround it shall be measuring from the ground level.—

(*a*) for horizontal tanks, not less than one-third the height of the tank;

(*b*) for perpendicular tanks, not less than one-half the height of the tank.

3. The height of walls or embankments surrounding the installation shall be not less than two feet six inches from the ground level.

4. The following distances shall be kept clear between protected works not forming part of the installation and the enclosure walls or embankments :—

Where the number of gallons stored is—	Distance to be kept clear.
5,000 and under	Not less than 15 feet.
Over 5,000 and up to 20,000	Ditto 20 ,,
Over 20,000 and up to 50,000...	Ditto 30 ,,

Provided that these distances may be reduced by the Local Government on the recommendation of the Chief Inspector of Explosives in cases where screen walls are provided or other special precautions taken. or where there are special circumstances which in the opinion of the Chief Inspector of Explosives warrant the reduction.

5. Soldering shall only be permitted in a separate room or building placed as far from the tanks as can be conveniently arranged, in which no storage or filling shall be permitted. No more tins shall be allowed in the soldering room at any one time than are necessary for expeditious working.

6. No fire or lights, except those necessary in the soldering room and watchman's house, shall be permitted.

7. If the installation contains tanks of which the capacity does not exceed fifteen thousand gallons, either—

(*a*) each tank shall be separately enclosed in the manner prescribed in condition 1, or,

(*b*) the entire installation shall be surrounded by a masonry wall or embankment or a combination of these forming an enclosure of dimensions sufficient to contain, and prevent the overflow of, all the oil that may be stored at any one time within such walls or embankments.

8. In the case of all storage sheds within an installation, which is not surrounded by a masonry wall or embankment as provided in clause (*b*) of condition 7, either the doorways and other openings of the building shall be built up to a height of two feet above the level of the ground outside it, or the floor sunk to a depth of two feet below the level of the ground, so that the petroleum cannot flow out from the building in case of its escape from the receptacle in which it is contained, or the building itself shall be surrounded with a masonry wall or embankment or both not less than two feet high. When the quantity of petroleum stored exceeds 16,000 gallons the height or depth shall be three feet.

A combination of these methods is permissible.

FORM F.

(RULE 9 OF CHAPTER IV OF PART II.)

Special license to possess and transport dangerous petroleum for owners of motor vehicles.

No. Free of charge.

LICENSE is hereby granted to owner (or hirer) of a motor-vehicle (or vehicles) for the possession of gallons of dangerous petroleum for

use therein at* and for its transport on the said motor-vehicle (or vehicles) for the purpose of use therein, subject to the rules for the possession and transport of dangerous petroleum published in Notification No. 863, dated 15th May 1909, and to the conditions at the back of this license.

* Situation and description of storage shed above referred to.

When the quantity exceeds 40 gallons. *Secretary to the Chief Commissioner, Central Provinces.*

When the quantity does not exceed 40 gallons. *District Magistrate or authority appointed under rule 2 of Chapter III of Part II.*

The *190* .

ENDORSEMENT ON FORM F.

Conditions of the License.

1. The dangerous petroleum shall not be kept, used or transported except in gas-tight tinned or galvanized sheet-iron, steel or lead plate drums or receptacles containing each not more than 4 gallons and fitted with well-made filling holes and well-fitting screw-plugs, or fitted with screw cap or other cap with metal air-tight under-cap. Such drums or receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch. Provided that wood cases shall not be necessary when the drums or receptacles are made of tinned or galvanized sheet iron, or steel, and have the following thickness of metal :—

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 gallons	22 B. W. G.

2. The drums or receptacles shall be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure.

3. Every such vessel, not forming part of a motor-vehicle, when used for transporting or keeping dangerous petroleum, shall bear the words "Dangerous petroleum—Highly inflammable" legibly and indelibly stamped or marked thereon, or on a metallic or enamelled label attached thereto.

4. An air-space of at least one-tenth of its capacity shall be left in each drum or receptacle at the time of filling to allow for expansion of the dangerous petroleum.

5. Before repairs are done to any such vessel, that vessel shall, as far as practicable, be cleaned by the removal of all dangerous petroleum and of all dangerous vapours derived from the same.

6. The storage shed in which the dangerous petroleum is stored shall be well ventilated and constructed of uninflammable materials, provided, however, that the doors and windows may be of wood.

7. Where a storage shed forms part of, or is attached to, another building, and when the intervening floor or partition is of an unsubstantial or inflammable character, or has an opening therein, the whole of such building shall be deemed to be the storage shed, and no portion of such storage shed shall be used as a dwelling, or as a place where persons assemble. A storage shed shall have a separate entrance from the open air distinct from that of any dwelling or building in which persons assemble.

8. The amount of dangerous petroleum to be kept in any one storage shed whether or not upon motor-vehicles, shall not exceed sixty gallons at any one time.

9. The filling or replenishing of any vessels with dangerous petroleum shall not be carried on, nor shall the contents of any such vessel be exposed, in the presence of fire or artificial light, except a light of such construction, position and character as not to be liable to ignite any inflammable vapour, and no artificial light shall be brought within dangerous proximity of the place where any vessel containing dangerous petroleum is being kept.

10. In the case of all dangerous petroleum kept or transported for the purpose of, or in connection with any motor-vehicle, (*a*) all due precautions shall be taken for the prevention of accidents by fire or explosion and for the prevention of unauthorized persons having access to any dangerous petroleum kept or transported and to the vessels containing, or having actually contained, the same, and (*b*) every person managing or employed on or in connection with any motor-vehicle shall abstain from every act, whatever, which tends to cause fire or explosion, and which is not reasonably necessary, and shall prevent any other person from committing such act

11. The storage shed shall be liable to inspection by an officer not being of lower rank than an Inspector of Police, authorised by the Local Government in this behalf.

FORM G.

(RULE 1 OF CHAPTER V OF PART II.)

General license to transport petroleum other than dangerous petroleum.

No. Fee, Rs. 100.

A GENERAL license is hereby granted to to transport petroleum, other than dangerous petroleum, subject to the rules contained in Chapter V of Part II of Government Notification No. 863, dated 15th May 1909, and to the condition at the back of this license.

This license shall continue in force till the

District Magistrate or other authority appointed under rule 2 of Chapter III of Part II.

The *190* .

ENDORSEMENT ON FORM G.

Condition of the License.

The petroleum, if not in bulk, shall be packed in air-tight tins or drums of steel or iron, or other receptacles not easily broken or in tank-carts of a pattern approved by the Local Government in this behalf, or in bottles securely stoppered and carefully packed so as to avoid risk of breakage.

FORM H.

(RULE 2 OF CHAPTER V OF PART II.)

General license to transport dangerous petroleum otherwise than in bulk.

No. Fee, Rs. 50.

A GENERAL license is hereby granted to to transport dangerous petroleum otherwise than in bulk, subject to the rules contained in Chapter V of Part II of Government Notification No. 863, dated 15th May 1909, and to the further conditions on the back of this license.

This license shall continue in force till the

When the quantity to be transported at a time exceeds 40 gallons. — *Secretary to the Chief Commissioner, Central Provinces.*

When the quantity to be transported at a time does not exceed 40 gallons. — *District Magistrate or other authority appointed under Rule 2 of Chapter III of Part II.*

The *190* .

ENDORSEMENT ON FORM H.

Conditions of License.

1. The petroleum must be contained in gas-tight tinned or galvanised sheet iron, steel, or lead plate receptacles containing each not more than forty gallons and fitted with well-made filling holes and well-fitting screw-plugs, or with screw cap or other cap with metal air-tight under-cap. Such receptacles shall be packed in strong wooden cases the thickness of the wood to be not less than three-eighths of an inch :

Provided that wooden cases shall not be necessary where the receptacles are made of tinned or galvanized sheet iron or steel, and have the following thickness of metal :

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 but does not exceed 4 gallons	22 B. W. G.
(3) When the capacity exceeds 4 but does not exceed 8 gallons	20 B. W. G.
(4) When the capacity exceeds 8 but does not exceed 20 gallons	16 B. W. G.
(5) When the capacity exceeds 20 but does not exceed 30 gallons	14 B. W. G.
(6) When the capacity exceeds 30 but sdoes not exceed 40 gallons	12 B. W. G.

2. An air-space of at least one-tenth of its capacity must be left in each receptacle at the time of filling.

3. The receptacles must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit.

4. The nature of the contents and the words "Highly inflammable" must be distinctly marked on the receptacles.

FORM I.

(RULE 4 OF CHAPTER V OF PART II.)

Pass to be granted by the holder of General License No. for the transport of dangerous/non-dangerous petroleum otherwise than in bulk/in bulk or otherwise than in bulk subject to the rules contained in Chapter V of Part II of Government Notification No. 863, dated 15th May, 1909, and to the further conditions on the back of this pass.

* To be omitted when the petroleum is transported in bulk.

This pass covers (containing) * gallons of drums/tins/cases/packages dangerous/non-dangerous

petroleum, being the property of while in transport from

to .

The 190 . Holder of General License No.

ENDORSEMENT ON FORM I.

Conditions of Pass.

1.—*For dangerous petroleum in the case of the holder of a license in Form H.*

1. The petroleum must be contained in gas-tight tinned or galvanized sheet iron, steel, or lead plate receptacles containing each not more than forty gallons and fitted with well-made filling holes and well-fitting screw plugs, or with screw cap or other cap with metal air-tight under-cap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch:

Provided that wooden cases shall not be necessary where the receptacles are made of tinned or galvanised sheet iron or steel and have the following thickness of metal:

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B.W.G.
(2) When the capacity exceeds 2 but does not exceed 4 gallons	22 B.W.G.
(3) When the capacity exceeds 4 but does not exceed 8 gallons	20 B.W.G.
(4) When the capacity exceeds 8 but does not exceed 20 gallons	16 B.W.G.
(5) When the capacity exceeds 20 but does not exceed 30 gallons	14 B.W.G.
(6) When the capacity exceeds 30 but does not exceed 40 gallons	12 B.W.G.

2. An air-space of at least one-tenth of its capacity must be left in each receptacle at the time of filling.

3. The receptacles must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence of extraordinary accident, to be broken or become defective, leaky or insecure in transit.

4. The nature of the contents and the words "Highly inflammable" must be distinctly marked on the receptacles.

II.—For dangerous petroleum in the case of the holder of a license in Form L.

1. The quantity of dangerous petroleum to be transported under this pass shall not exceed 60 gallons.

2. The petroleum must be contained in gas-tight tinned or galvanized sheet iron, steel, or lead plate receptacles containing each not more than four gallons and fitted with well-made filling holes and well-fitting screw-plugs, or with screw cap or other cap with metal air-tight under-cap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch:

Provided that wooden cases shall not be necessary where the receptacles are made of tinned or galvanized sheet iron or steel and have the following thickness of metal:

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B.W.G.
(2) When the capacity exceeds 2 gallons	22 B.W.G.

3. An air-space of at least one-tenth of its capacity must be left in each receptacle at the time of filling.

4. The receptacles must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit.

5. The nature of the contents and the words "Highly inflammable" must be distinctly marked on the receptacles.

III.—For petroleum other than dangerous petroleum.

The petroleum, if not in bulk shall be packed in air-tight tins or drums of steel or iron, or other receptacles not easily broken, or in tank-carts of a pattern approved by the Local Government in this behalf, or in bottles securely stoppered and carefully packed so as to avoid risk of breakage.

FORM J.

RULE 5 OF CHAPTER V OF PART II.

Special license to transport petroleum other than dangerous petroleum.

No. Fee, Rs.

LICENSE is hereby granted to to transport from to * (cases or packages containing) * gallons of petroleum subject to the rules contained in Chapter V of Part II of Government Notification No. 863, dated 15th May, 1909, and to the further condition on the back of this license.

* To be omitted when the petroleum is transported in bulk.

The license shall continue in force till the day of

District Magistrates or authority appointed under Rule 2 of Chapter III of Part II.

The 190 .

ENDORSEMENT ON FORM J.

Conditions of the License.

The petroleum, if not in bulk, shall be packed in air-tight tins or drums of steel or iron, or other receptacles not easily broken, or in tank-carts of a pattern approved by the Local Government in this behalf, or in bottles securely stoppered and carefully packed so as to avoid risk of breakage.

FORM K.

RULE 6 OF CHAPTER V OF PART II.

Special license to transport dangerous petroleum.

No. Fee, Rs.

LICENSE is hereby granted to of to transport cases or packages containing in all gallons of dangerous petroleum from to subject to the rules contained in Chapter V of Part II of Government Notification No. 863, dated 15th May, 1909, and to the further conditions on the back of this license.

The amount of petroleum in each case or package is stated below.

This license shall continue in force till the day of

When the quantity exceeds 40 gallons. *Secretary to the Chief Commissioner, Central Provinces.*

When the quantity does not exceed 40 gallons. *District Magistrate or authority appointed under Rule 2 of Chapter III of Part II.*

The 190 .

ENDORSEMENT ON FORM K.

Conditions of License.

1. The petroleum must be contained in gas-tight tinned or galvanized sheet iron, steel, or lead plate receptacles containing each not more than forty gallons and fitted with well-made filling holes and well-fitting screw plugs or with screw cap or other cap with metal air-tight undercap Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch :

Provided that wooden cases shall not be necessary where the receptacles are made of tinned, or galvanized sheet iron, or steel, and have the following thickness of metal:—

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 but does not exceed 4 gallons	22 B. W. G.
(3) When the capacity exceeds 4 but does not exceed 8 gallons	20 B. W. G.
(4) When the capacity exceeds 8 but does not exceed 20 gallons	16 B. W. G.
(5) When the capacity exceeds 20 but does not exceed 30 gallons	14 B. W. G.
(6) When the capacity exceeds 30 but does not exceed 40 gallons	12 B. W. G.

2. An air-space of at least one-tenth of its capacity must be left in each receptacle at the time of filling.

3. The receptacles must be so substantially constructed and secured as not to be liable except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit.

4. The nature of the contents and the words "Highly inflammable" must be distinctly marked on the receptacles.

FORM L.

(RULE 9 OF CHAPTER V OF PART II.)

General license to the owner of a motor-vehicle to transport dangerous petroleum otherwise than on a motor-vehicle.

No. Fee Rs. 5.

A GENERAL license is hereby granted to to transport dangerous petroleum, otherwise than in bulk, up to 40 gallons at a time, subject to the rules contained in Chapter V of Part II of Government Notification, No. 863, dated 15th May 1909, and to the further conditions on the back of this license.

This license shall continue in force till the

When the quantity exceeds 40 gallons. *Secretary to the Chief Commissioner, Central Provinces.*

When the quantity does not exceed 40 gallons. *District Magistrate or authority appointed under Rule 2 of Chapter III of Part II.*

The *190.*

ENDORSEMENT OF FORM L.

Conditions of license.

1. The petroleum must be contained in gas-tight tinned or galvanized sheet iron, steel, or lead plate receptacles containing each not more than four gallons and fitted with well made filling holes and well-fitting screw plugs, or with screw cap or other cap with metal air-tight undercap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch :

Provided that wooden cases shall not be necessary where the receptacles are made of tinned or galvanized sheet iron or steel and have the following thickness of metal :—

		Not less than
(1) When the capacity does not exceed 2 gallons	...	27 B W. G.
(2) When the capacity exceeds 2 gallons	...	22 B. W. G.

2. An air-space of at least one-tenth of its capacity must be left in each receptacle at the time of filling.

3. The receptacles must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit.

4. The nature of the contents and words " Highly inflammable" must be distinctly marked on the receptacles.

APPENDIX E.

PUNJAB.

COMMERCE AND INDUSTRY DEPARTMENT.

NOTIFICATIONS.

The 15th February, 1909.

No. 90.—In exercise of the powers conferred by section 9 of the Indian Petroleum Act, 1899, and with the previous sanction of the Governor-General in Council, the Lieutenant-Governor is pleased to make the following rules to regulate the possession and transport of petroleum in the Punjab in supersession of all previous rules issued on the subject :—

RULES UNDER SECTION 9 OF THE INDIAN PETROLEUM ACT, 1899, FOR THE IMPORTATION, POSSESSION AND TRANSPORT OF PETROLEUM IN THE PUNJAB.

PART I.

PRELIMINARY.

Definitions. 1. In these rules,—

(*a*) " part " means a part of these rules ;

(*b*) " certificated petroleum " means petroleum certified to be non dangerous petroleum by a certificate of such description as the Local Government may from time to time, by written order, prescribe, granted at the port of shipment ;

(*c*) " petroleum in bulk " means petroleum in quantities exceeding five hundred gallons contained in any one receptacle ;

(*d*) " installation " means a place specially prepared for the storage of petroleum in bulk, or for bulk combined with non-bulk storage, and may be either a major or a minor installation ;

(*e*) "major installation" means an installation—

(1) capable of containing an amount of oil, whether in bulk only or in combined bulk and non-bulk storage exceeding fifty thousand gallons, or

(2) in which tin-making operations are carried on ;

(*f*) "minor installation" means an installation—

(1) capable of containing an amout of oil, whether in bulk only or in combined bulk and non-bulk storage, not exceeding fifty thousand gallons, and

(2) in which no tin-making operations are carried on ;

(*g*) "storage shed" means a building used for the storage of petroleum otherwise than in bulk, and may or may not form part of an installation ;

(*h*) "protected works" includes buildings in which persons dwell or assemble, docks, wharves, timber yards, other petroleum stores, and any other place not forming part of an installation, which the Local Government may by notification declare as such;

(*i*) "testing officer" means the testing officer appointed by the Local Government under section 10 of the Act for any port at which petroleum may be imported under these rules ;

(*j*) "motor-vehicle" means any vehicle or vessel propelled by a motor in which petroleum is used as fuel; and

(*k*) "owner," as applied to a motor-vehicle, includes a person who hires, or is otherwise entitled for the time being to use or work a motor-vehicle.

PART II.

POSSESSION AND TRANSPORT OF PETROLEUM.

NOTE.—Dangerous petroleum may be kept without a license up to three gallons, provided it is stored as required by section 6 of Act VIII of 1899, and other petroleum may be possessed up to 500 gallons without a license.

(License for amounts less than the above may be required under the Municipal Act or Cantonment Code.)

CHAPTER I.—Possession of Petroleum.

Smoking prohibited.

1. No smoking shall be permitted inside any installation or storge shed.

Supervision of operations within installation of storage shed.

2. All operations within any installation or storage shed shall be conducted under the supervision of a responsible agent or supervisor.

Cleanliness of installation.

3. The ground in the interior of an installation shall be kept clean and free from goods of a combustible nature, vegetation and rubbish.

Supply of sand or dry earth in installation.

4. A supply of sand or dry earth shall always be kept in an installation for the purpose of extinguishing fire.

Marking of capacity of tanks.

5. The capacity in gallons of every tank in an installation shall be conspicuously marked on it, and shall be calculated at the rate of 6. 25 gallons per cubic foot.

Protection from lightning.

6. Every tank or other receptacle for the storage of petroleum in bulk, except a tank or receptacle which is not of sufficient capacity to contain ten thousand gallons of petroleum, and which is so situated as not to be liable to cause danger in the event of the petroleum being ignited, shall be protected by an efficient lightning conductor.

Explanation.—A tank or receptacle shall be deemed to be so situated as not to be liable to cause danger in the event of the petroleum being ignited, if it is not in close proximity to any other tank or receptacle or to any building not forming part of the installation, and if it is surrounded by a wall, or embankment, or sunk, in an excavation, the enclosure thus formed being sufficient to contain the whole contents of the tank or receptacle.

Testing of lightning conductor by licensee.

7. Not less than once in every year the licensee of an installation shall test, or cause to be tested, the efficiency of the conductor in such manner as the Chief Inspector of Explosives may, by general or special order, declare to be sufficient, and a certificate showing the date of the last test shall be posted in a conspicuous place within the installation.

Official testing of lightning-conductor.

8. Any officer appointed by the Local Government in this behalf may enter any installation for the purpose of testing the efficiency of the conductor, at any time after sunrise and before sunset.

Time for work in installations or storage sheds.

9. No installation or storage shed shall be open, and no work in any installation or storage shed shall be permitted, between sunset and sunrise; provided that in cases where electric lighting is exclusively used, night working may be permitted by the Local Government on the recommendation of the Chief Inspector of Explosives.

Closure of pipes and openings.

10. Where there are any pipes or openings for draining out water in any enclosure wall, arrangements shall be made whereby they can be closed, and they shall only be kept open when actually necessary for drainage purposes. The nature of such arrangements shall be shown in the specifications which are required under rule 10 of Chapter IV of this part to be submitted with the application for a license.

Material for storage sheds.

11. All storage sheds in an installation shall be built of uninflammable material.

Posting up of rules and conditions.

12. There shall be hung up in a conspicuous place in every installation and storage shed for which a license has been granted, copies, in English and the vernacular, of the rules contained in this chapter, and of the conditions endorsed on the license.

CHAPTER II.—Transport of Petroleum.

Conditions of carriage of petroleum in bulk by water.

1. Petroleum in bulk shall not be carried by water except on a ship certified as suitable for the carriage of petroleum in bulk by an officer appointed by the Local Government in this behalf, and the petroleum shall be stowed in such part of the ship and in such manner as may be approved, by general or special order, by the authority so appointed.

Petroleum in bulk on barges or flats.

2. Petroleum in bulk shall not, except with the sanction of the Local Government, be transported on any barge or flat which is not towed by a steamer or motor tug.

Inflammable cargo or passengers.

3. No ship shall carry petroleum in bulk which carries at the same time passengers or any inflammable cargo other than petroleum and its products.

Towage of barge or flat carrying petroleum.

4. No steamer carrying inflammable cargo, other than petroleum and its products, shall tow a barge or flat carrying petroleum in bulk.

Towage of additional barge or flat carrying inflammable cargo.

5. No steamer towing a barge or flat carrying petroleum in bulk shall at the same time tow any other barge or flat carrying inflammable cargo other than petroleum and its products.

Exemption of petroleum having a flashing point above 150°.

6. Rules 4 and 5 of this chapter shall not apply when the petroleum carried in bulk has a flashing point above 150° Fahrenheit.

Cleaning of compartments.

7. When any ship has discharged petroleum in bulk, the oil compartment shall be thoroughly cleaned and freed from petroleum and petroleum vapour before any other cargo or passengers are taken on board.

Hatches to be kept closed.

8. The hatches of oil tanks in all ships certified under rule 1 of this chapter as suitable for the carriage of petroleum in bulk, and the manholes in the hatches, shall be kept closed (except in so far as it may be necessary to open them to take on board or discharge petroleum or to clean tanks) so long as there is petroleum in the tanks and until the tanks have been thoroughly cleaned and free from petroleum and petroleum vapour.

Loading and discharge.

9. No petroleum in bulk shall be taken on board or discharged from any ship certified as suitable for the carriage of petroleum in bulk, except through a suitable pipe prepared for the purpose.

Naked lights, fire or smoking prohibited.

10. No fire, naked lights or smoking shall be allowed on board any flat or barge carrying petroleum in bulk.

Flag to be carried.

11. The person in charge of any flat or barge carrying petroleum in bulk shall from sunrise to sunset show at its stern a conspicuous red flag having the words "petroleum Boat" marked on it in black letters.

Loading and unloading by night.

12. No petroleum in bulk shall be loaded on or unloaded from any ship between sunset and sunrise, except when electric light is exclusively used.

Validity of license granted in another province.

13. Petroleum may be transported into and within the Punjab under cover of a license granted by the prescribed authority in any other province of British India or in any are a outside British India to which the Indian Petroleum Act, 1899, may be applied ; provided that the conditions of such license are observed throughout the period during which the petroleum is in transit.

CHAPTER III.—General Provisions relating to Licenses.

Applications for licenses.

1. All applications for licenses for the possession or transport of petroleum shall be made to the District Magistrate.

Licensing authority.

2. Licenses—

(*a*) for the possession of non-dangerous petroleum, not being petroleum in bulk,

(*b*) for the possession of non-dangerous petroleum in a minor installation,

(*c*) for the possession or transport of dangerous petroleum in quantities not exceeding forty gallons, and

(*d*) for the transport of petroleum, not being dangerous petroleum otherwise than by a pipe line.

may be granted by a District Magistrate, or by such other authority as the Local Government may from time to time, by order in writing, appoint in this behalf. In all other cases the licensing authority shall be the Local Government :

Provided that, in the case of renewals of existing licenses, the Local Government may delegate its powers under this Rule to the District Magistrate or such other authority as the Local Government may from time to time, by an order in writing appoint in this behalf.

Refusal of license.

3. The Licensing authority may, for reason to be communicated to the applicant, refuse a license in any case :

Provided that the licensing authority shall not refuse a license for the possession of petroleum in a minor installation, unless such authority has first made a reference to the Chief Inspector of Explosives and obtained his concurrence.

Forfeiture of license.

4. Every license granted under these rules shall be liable to be forfeited for any contravention of the Act, or of any rule thereunder, or of any condition contained in such license, or for any other reason deemed by the licensing authority to be good and sufficient and recorded by him in writing.

Particulars of license.

5. Every license and pass granted under these rules shall be held subject to the conditions endorsed on it, and shall contain all the particulars which are contained in the form prescribed for it by these rules :

Provided that, in the case of installation and storage sheds in existence before these rules were made, the license may contain in lieu of the particulars contained in the form prescribed for it by these rules either such particulars as may have been entered in the license granted for such installation or storage shed under the Rules heretofore in force, or such particulars as may in each case be approved by the Chief Inspector of Explosives.

Renewal of licenses.

6. (1) Every application for the renewal of a license shall be made in the same manner as an application for an original license.

(2) Every such application shall be made at a date not less than thirty days before the date on which the original license expires, and if the application is so made the premises shall be held to be duly licensed until such date as the licensing authority issues the renewed license, or until an intimation that the renewal of the license is refused has been communicated to the applicant.

(3) The same fee shall be charged for the renewal of a license as for a new license.

Supply of rules to licenses.

7. When any license is granted for the possession or transport of petroleum, a copy of the rules contained in Chapter I of this part in the case of a license for possession, and in Chapter II of this Part in the case of a license for transport, printed in English and the vernacular, shall be given, together with the license, to the licensee.

Procedure on death or disability of license.

8. Where a licensee dies, or becomes insolvent, or becomes mentally incapable or otherwise disabled, the person carrying on the business of such licensee shall not be liable to any penalty or forfeiture under the Act or these rules for acting under the license during such time as may reasonably be necessary to allow him to make an application for a new license in his own name for the unexpired portion of the original license.

Loss of license.

9. Where a license granted under these rules is lost or accidentally destroyed a duplicate may be granted.

CHAPTER IV.—Licenses for the possession of Petroleum.

Continuance of license.

1. Every license for the possession of petroleum shall remain in force until the 31st of December next following the date of issue of the license.

Petroleum not in bulk, other than dangerous petroleum.

2. Licenses for the possession of petroleum, not being dangerous petroleum otherwise than in bulk, may be granted in Form A.

Dangerous petroleum not in bulk.

3. Licenses for the possession of dangerous petroleum, not in bulk, in quantity exceeding forty gallons, may be granted in Form B.

Dangerous petroleum not exceeding forty gallons.

4. Licenses for the possession of dangerous petroleum, in quantity not exceeding forty gallons, may be granted in Form C.

Transfer of certain licenses.

5. (1) The holder of a license in Form A, B or C may, at any time before the expiry of the license, apply for permission to transfer his license to another person.

(2) Such application shall be made to the District Magistrate, who shall, if he approves of the transfer, enter upon the license, under his signature, an endorsement to the effect that the license has been transferred to the person named.

(3) A fee of Re. 1 shall be charged on each such application.

(4) The person to whom the license is so transferred shall enjoy the same powers and be subject to the same obligations under the license as the original holder.

Possession of dangerous petroleum in receptacles containing more than forty gallons each.

6. Special licenses for the possession of the dangerous petroleum in receptacles containing more than forty gallons, but not more than five hundred gallons each, may be granted on such terms as the Local Government may prescribe on the recommendation of the Chief Inspector of Explosives.

Storage in major installations.

7. Licenses for the possession of any stated quantity of petroleum, not being dangerous petroleum, in major installations, in accordance with such specifications and plans as the Local Government, on the recommendation of the Chief Inspector of Explosives, may from time to time, by general or special order, approve, may be granted in Form D.

Storage in minor installations.

8. Licenses for the possession of any stated quantity of petroleum, not being dangerous petroleum, in minor installations, in accordance with such specifications and plans as the Chief Inspector of Explosives, may from time to time, by general or special order, approve, may be granted in Form E.

Dangerous petroleum for use on motor vehicles.

9. (1) Licenses in Form F may be granted free of charge for the possession of dangerous petroleum for use on motor vehicles and for its transport thereon, for the purpose of use therein.

(2) The provisions of the ordinary rules relating to the possession of dangerous petroleum shall regulate the possession of dangerous petroleum for use on motor vehicles, save in so far as these provisions are varied by the conditions of the license.

Particulars to be given in applications for licenses for the possession of petroleum other than licenses under rules 4 and 9.

10. Every application for a license for the possession of petroleum, other than licenses under rules 4 and 9 of this chapter, shall specify—

(*a*) the description and quantity of petroleum which the applicant desires to keep ;

(*b*) the name and possession of the premises intended to be used for the storage of such petroleum, and whether the said premises fulfil the conditions prescribed by Form A, Form B, Form D or Form E, as the case may be ;

(*c*) the amount of petroleum, if any, already licensed to be kept on the same premises.

If the application be made for the first time in respect of any major or minor installation, or if the quantity of petroleum to be stored in such an installation is to be increased, the application shall be accompanied by specifications and plans drawn to scale.

Certificate of safety to be furnished.

11. Before petroleum is stored in any major or minor installation for which a license has been granted for the first time, a certificate shall be furnished to the licensing authority to the effect that all enclosure walls and embankments required to be constructed under the conditions of the license are sufficient to ensure safety. The certificate shall be signed by an Engineer accepted as qualified for the purpose by the licensing authority. When the license is not granted for the first time, but is granted for an increased quantity of petroleum, a certificate shall similarly be furnished to the licensing authority before any quantity of petroleum exceeding the amount which was admissible under the former license is stored in the installation.

Particulars to be given in applications for licenses under rules 4 and 9.

12. Every application for a license under rules 4 and 9 of this chapter shall specify—

(*a*) Whether the applicant is the owner of a motor vehicle ;

(*b*) the amount of dangerous petroleum the applicant desires to store ;

(*c*) the exact possession and nature of the premises intended to be used for the storage of such dangerous petroleum, and whether the said premises fulfil the conditions prescribed by Form C or Form F, as the case may be.

CHAPTER V.—Licenses for the transport of Petroleum.

General licenses for the transport of non-dangerous petroleum.

1. General licenses for the transport of petroleum, other than dangerous petroleum, may be granted for a period of twelve months in Form G.

General licenses for the transport of dangerous petroleum.

2. General licenses for the transport of dangerous petroleum otherwise than in bulk may be granted for a period of twelve months in Form H.

Note—.Dangerous petroleum cannot be transported in bulk.

Effect of general licenses.

3. Licenses granted under rules 1, 2 and 9 of this chapter may authorize the holders to transport petroleum without restriction as to destination or total quantity.

Pass for transport of petroleum.

4. The holder of a general license granted under rule 1, 2 or 9 of this chapter shall, with each consignment of petroleum conveyed under cover of his license, issue to the person who takes charge of the petroleum for the purpose of transporting it, a numbered pass in Form I.

Special licenses for the transport of petroleum other than dangerous petroleum.

5. Special licenses may be granted for the transport of petroleum, other than dangerous petroleum, in quantities exceeding five hundred gallons, in Form J.

Special licenses for the transport of dangerous petroleum.

6. Special licenses may be granted for the transport of dangerous petroleum, other than in bulk, in Form K.

Effect of special license.

7. A special license, granted under rules 5 and 6 shall only cover the transport of the particular consignment entered in the license, and shall be valid for such period as may be entered in it.

Particulars to be given in application for special licenses.

8. Applications for special licenses for the transport of petroleum by rail, by road, by steamer or by barge, or by two or more of these modes of conveyance, shall specify the description and quantity of petroleum to be transported, and the places from and to which, respectively, the petroleum is to be conveyed, and shall describe the receptacles in which it is to be contained, or, in the case of petroleum to be transported in bulk by water, shall state that the ship in which it is to be carried has been certified as required by rule 1 of Chapter II of this Part.

Transport of dangerous petroleum by motorists otherwise than on a motor vehicle.

9. General licenses in Form L to transport dangerous petroleum up to a maximum of sixty gallons at a time, otherwise than on motor-vehicle, may be granted for a period of twelve months to owners of motor-vehicles holding licenses under rule 9, sub-rule (1), of Chapter IV of this Part, to possess petroleum and use or transport it on a motor-vechicle.

CHAPTER VI.—Fees.

Method of levying fees.

1. (1) Where the proceeds of fees leviable for licenses under these rules have been assigned by the Local Government to any local authority, the fees shall be levied in such manner as the local authority may from time to time direct.

(2) In all other cases the fees shall be paid in cash on receipt of a notice from the licensing authority that a license will be granted.

(3) The court fee stamp of the value of eight annas, representing the fee chargeable under Schedule II, Article I (*b*), of the Court Fees Act on an application for a license presented to a Magistrate, should be attached to the application.

Fees for licenses for possession of petroleum.

2. The following fees shall be charged for licenses for the possession of petroleum, namely :—

Non-dangerous Petroleum.

	Rs.	
(*a*) When the quantity to be stored exceeds five hundred, but does not exceed one thousand gallons,	12	
(*b*) When the quantity to be stored exceeds one thousand, but does not exceed five thousand gallons,	12	for the first one thousand gallons, *plus* Rs. 2 for every additional one thousand gallons, or part thereof.
(*c*) When the quantity to be stored exceeds five thousand gallons, but does not exceed fifty thousand gallons,	20	for the first five thousand gallons, *plus* Rs. 4 for every additional one thousand gallons, or part thereof.
(*d*) When the quantity to be stored exceeds fifty thousand gallons,	250	

Dangerous Petroleum.

	Rs.	
(*e*) When the quantity to be stored does not exceed forty gallons,	3	
(*f*) When the quantity to be stored exceeds forty gallons, but does not exceed five hundred gallons,	8	
(*g*) When the quantity to be stored exceeds five hundred gallons,		the same fees as those laid down for non-dangerous petroleum.

Fees for licenses for transport of petroleum.

3. The following fees shall be charged for licenses for the transport of petroleum :—

Non-dangerous Petroleum.

	Rs.
Special license—	
(*a*) When the quantity to be transported exceeds five hundred, but does not exceed five thousand gallons,	1
(*b*) For every additional five thousand gallons or part of five thousand gallons,	1
General license for the transport of non-dangerous petroleum by rail, by road or by water, for twelve months,	100

Dangerous Petroleum.

	Rs.	
Special License—		
(*i*) When the quantity to be transported does not exceed forty gallons,	2	
(*ii*) When the quantity to be transported exceeds forty gallons, but does not exceed four hundred and eighty gallons,	2	for the first 40 gallons, *plus* 8 annas for every additional forty gallons, or part thereof.
(*iii*) When the quantity to be transported exceeds four hundred and eighty gallons,	8	for the first four hundred and eighty gallons, *plus* Rs. 2 for every additional four hundred and eighty gallons, or part thereof.
General license for the transport of dangerous petroleum by the owner of a motor-vehicle by road, rail or water, up to a maximum of sixty gallons at a time,	5	
General license for the transport of dangerous petroleum by dealers by rail, road or water.	50	

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Fee for license granted for unexpired portion of an original license.

4. A fee of one rupee shall be charged for a new license for the unexpired portion of an original license granted to any person applying for the same in accordance with the provisions of rule 8 of Chapter III of this Part.

Fee for duplicate license.

5. A fee of eight annas shall be charged for a duplicate of a license granted in accordance with the provisions of rule 9 of Chapter III of this part.

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FORM A.

Rule 2 of Chapter IV of Part II.

License to possess petroleum (other than dangerous petroleum), otherwise than in bulk.

No. Fee, Rs.

LICENSE is hereby granted to for the storage in the storage shed described below, of gallons of petroleum, subject to the rules for the storage of petroleum published in notification No. , dated , and to the further conditions on the back of this license.

District Magistrate or authority
appointed under rule 2 of Chapter III of Part II.

The *190* .

[Description of the storage shed above referred to.]

* * * * omitted by Punjab Govt.: Order No. 265, 21st April 1909.

Endorsement on Form A.

CONDITIONS OF THE LICENSE.

1. If the licensing officer call on the holder of a license, by a notice in writing to execute any repairs of the storage shed which may, in the opinion of such officer, be necessary for the safety of the shed, the holder of the license shall execute the repairs within such period, not being less than one month from the date of receipt of the notice, as may be fixed by the notice.

2. The storage shed shall be constructed of masonry or other uninflammable material with terraced, tiled or iron roof, and with tiled or paved or earthen floors, but the beams, rafters, columns, windows and doors may be of wood.

3. Either the doorways and other openings of the storage shed shall be built up to a height of two feet above the level of the road or street, or the floor sunk to a depth of two feet below the level of the road or street, so that the petroleum cannot flow out from the building in case of its escape from the receptacle in which it is contained, or the building itself shall be surrounded with a masonry wall or embankment or both not less than two feet high. When the quantity of petroleum stored exceeds 16,000 gallons the height or depth shall be 3 feet.

A combination of these methods is permissible.

4. The following distances shall be kept clear round the building :—

Distances to be kept clear round buildings or enclosure walls.	Number of gallons to be stored.
None	5,000 and under.
20 feet	Over 5,000 and up to 50,000.
30 „	Unlimited.

5. No light, except a light of such strength, position and character as is not liable to ignite any inflammable vapour, nor fire of any description, shall be permitted within the storage shed.

FORM B.

Rule 3 of Chapter IV of Part II.

License to possess dangerous petroleum, otherwise than in bulk in quantity exceeding forty gallons.

No. Fee Rs.

LICENSE is hereby granted to for the storage in the storage shed described below, of gallons of dangerous petroleum, subject to the rules for the storage of petroleum published in notification No. , dated , and to the further conditions on the back of this license.

Secretary to the Government of the Punjab.

The 190 .

[Description of the storage shed above referred to].

Endorsement on Form B.

CONDITIONS OF LICENSE.

1. If the licensing officer call upon the holder of a license, by notice in writing to execute any repairs of the storage shed, which may, in the opinion of such officer, be necessary for the safety of the shed, the holder of the license shall execute the repairs within such period, not being less than one month from the date of receipt of the notice, as may be fixed by the notice.

1. Inserted by Punjab Govt. Order No. 265, 21st April 1909.

2. The license-holder is prohibited from delivering any quantity of dangerous petroleum exceeding three gallons to any one who has not a license under section 5 or section 6 of the Act, or any less quantity of such petroleum, except in accordance with the conditions of the proviso to section 6 of the Act, as to the vessels in which the petroleum must be contained.

3. The petroleum shall be stored in gas-tight tinned or galvanized sheet iron, steel, or lead plate receptacles, containing each not more than forty gallons and fitted with well-made filling holes and well-fitting screw plugs, or fitted with screw cap or other cap with metal air-tight undercap. Such receptacles shall be packed in strong wooden cases the thickness of the wood to be not less than three-eighths of an inch :

Provided that wooden cases shall not be necessary when the receptacles are made of tinned or galvanized sheet iron or steel, and have the following thickness of metal:—

	Not less than
(1) When the capacity does not exceed two gallons ...	27 B. W. G.
(2) When the capacity exceeds two gallons, but does not exceed four gallons	22 B. W. G.
(3) When the capacity exceeds four gallons, but does not exceed eight gallons	20 B. W. G.
(4) When the capacity exceeds eight gallons, but does not exceed twenty gallons	16 B. W. G.
(5) When the capacity exceeds twenty, but does not exceed thirty gallons	14 B. W. G.
(6) When the capacity exceeds thirty, but does not exceed forty gallons	12 B. W. G.

4. An air-space of at least one-tenth of its capacity shall be left in each receptacle at the time of filling.

5. The receptacles shall be so substantially constructed and secured as not to be liable, except under circumstances of grave negligence or extraordinary accident, to be broken or become defective, leaky or insecure.

6. The receptacles shall be labelled in accordance with the provisions of section 7 of the Act.

7. Any receptacle, before being repaired, shall be cleared of all dangerous petroleum and of all dangerous vapours arising from the same.

8. The storage shed shall be constructed of masonry or other uninflammable material with terraced, tiled or iron roofs and with tiled or paved or earthen floors.

9. Either the doorway and other openings of the storage shed shall be built up to a height of two feet above the level of the road or street, or the floor sunk to a depth of two feet below the level of the road or street, so that the petroleum cannot flow out from the building in case of its escape from the receptacle in which it is contained, or the building itself shall be surrounded with a masonry wall or embankment, or both, not less than two feet high. When the quantity of petroleum stored exceeds 16,000 gallons the height or depth shall be three feet.

A combination of these methods is permissible.

10. All ventilating openings in the storage shed shall be protected by strong wire gauze.

11. No light, except a light of such strength, position and character as is not liable to ignite any inflammable vapour, nor fire of any description, shall be permitted at any time within the storage shed.

12. All due precautions shall be taken for the prevention of unauthorized persons having access to any dangerous petroleum kept and to the vessels containing or having actually contained the same.

13. Every person managing or employed on or in connection with the storage shed shall abstain from any act whatever which tends to cause fire or explosion and which is not reasonably necessary, and shall prevent any other person from doing such act.

14. The drum or other receptacle containing dangerous petroleum shall only be opened on the licensed premises at or immediately adjoining the storage shed and for the time necessary for drawing off the petroleum, and during such drawing off every reasonable precaution shall be adopted for preventing the escape of dangerous petroleum or the vapour therefrom.

15. The following distances shall be kept clear from protected works round the storage shed :—

Quantity to be stored.		Distances to be kept clear.
Not exceeding 500 gallons	...	20 feet.
From 500 to 1,000 ,,	...	25 ,,
,, 1,000 to 5,000 ,,	...	30 ,,
,, 5,000 to 15,000 ,,	...	40 ,,
,, 15,000 to 25,000 ,,	...	50 ,,
,, 25,000 to 35,000 ,,	...	60 ,,
,, 35,000 to 50,000 ,,	...	70 ,,
,, 50,000 and over ,,	...	100 ,,

Provided that these distances may be reduced by the Local Government on the recommendation of the Chief Inspector of Explosives in cases where screen walls are provided, or other special precautions taken, or where there are special circumstances that, in the opinion of the Chief Inspector of Explosives, warrant the reduction.

16. Provided that when the quantity to be possessed does not exceed 60 gallons the provisions of conditions 8, 9 and 15 shall not apply, but the licensee shall observe the following conditions :—

(i) The storage shed in which the dangerous petroleum is stored shall be well ventilated and constructed of uninflammable material, provided, however, that the doors and windows may be of wood.

(ii) Where a storage shed forms part of, or is attached to, another building and when the intervening floor or partition is of an unsubstantial or inflammable character or has openings therein, the whole of such building shall be deemed to be the storage shed, and no portion of such storage shed shall be used as a dwelling-house or as a place where person assemble. The storage shed-shall have a separate entrance from the open air distinct from any building or dwelling in which persons assemble.

17. The storage shed shall be liable to inspection by an officer, not being of lower rank than a Sub-Inspector of Police, authorized by the Local Government in this behalf. [See Punjab Govt. Order, No. 721, 6th Dec., 1909.]

FORM C.

(Rule 4 of Chapter IV of Part II.)

LICENSE to possess dangerous petroleum in quantity not exceeding forty gallons.

No. Fee Rs. 3.

License is hereby granted to for the storage, in the storage shed described below, of gallons of dangerous petroleum, subject to the rules for the storage of petroleum published in notification No. , dated , and to the further conditions on the back of this license.

District Magistrate or authority,
appointed under rule 8 of Chapter III of Part II.

The 190 .

[Description of the storage shed above referred to.]

Endorsement on Form C.

CONDITIONS OF LICENSE.

1. If the licensing officer call upon the holder of a license, by notice in writing to execute any repairs of the storage shed, which may, in the opinion of such officer be necessary for the safety of the shed, the holder of the license shall execute the repairs within such period, not being less than one month from the date of receipt of the notice, as may be fixed by the notice.

2. The license-holder is prohibited from delivering any quantity of dangerous petroleum exceeding three gallons to any one who has not a license under section 5 or section 6 of the Act, or any less quantity of such petroleum, except in accordance with the conditions of the proviso to section 6 of the Act, as to the vessels in which the petroleum must be contained.

3. The petroleum shall be stored in gas-tight tinned or galvanized sheet iron, steel, or lead plate receptacles containing each not more than ten gallons and fitted with well-made filling holes and well fitting screw plugs, or fitted with screw cap or other cap with metal air tight undercap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch:

Provided that wooden cases shall not be necessary when the receptacles are made of tinned or galvanized sheet iron or steel, and have the following thickness of metal:—

	Not less than
(1) When the capacity does not exceed two gallons ...	27 B. W. G.
(2) When the capacity exceeds two gallons, but does not exceed four gallons	22 B. W. G.
(3) When the capacity exceeds four gallons, but does not exceed eight gallons	20 B. W. G.
(4) When the capacity exceeds eight gallons	16 B. W. G.

4. An air-space of at least one-tenth of its capacity shall be left in each receptacle at the time of filling,

5. Receptacles shall be so substantially constructed and secured as not to be liable, except under circumstances of grave negligence or extraordinary accident, to be broken or become defective, leaky or insecure.

6. The receptacles shall be labelled in accordance with the provisions of section 7 of the Act.

7. Any receptacle, before being repaired, shall be cleared of all dangerous petroleum and of all dangerous vapours arising from the same.

8. The storage shed in which the dangerous petroleum is stored shall be well ventilated and constructed of uninflammable material; provided, however, that the doors and windows may be of wood.

9. All ventilated openings in the storage shed shall be protected by strong wire gauze.

10. No light, except a light of such strength, position and character as is not liable to ignite any inflammable vapour, nor fire of any description, shall be permitted at any time within the storage shed.

11. All due precautions shall be taken for the prevention of unauthorised persons having access to any dangerous petroleum kept and to the vessels containing or having actually contained the same.

12. Every person managing or employed on or in connection with the storage shed shall abstain from any act whatever which tends to cause fire or explosion, and which is not reasonably necessary, and shall prevent any other person from doing such act.

13. The drum or other receptacle containing dangerous petroleum shall only be opened on the licensed premises at or immediately adjoining the storage shed and for the time necessary for drawing off the petroleum, and during such drawing of every reasonable precaution shall be adopted for preventing the escape of dangerous petroleum or the vapour therefrom.

14. Where a storage shed forms a part of, or is attached to another building, and where the intervening floor or partition is of an unsubstantial or inflammable character or has openings therein, the whole of such building shall be deemed to be the storage shed, and no portion of such storage shed shall be used as a dwelling or as a place where persons assemble. The storage shed shall have a separate entrance from the open air distinct from any building or dwelling in which persons assemble.

15. The storage shed shall be liable to inspection by an officer, not being of lower rank than a Sub-Inspector of Police, authorized by the Local Government in this behalf. [See Punjab Govt. Order, No. 721 6th Dec. 1909].

FORM D.

(Rule of Chapter IV of Part II.)

License to possess petroleum, not being dangerous petroleum, in a major installation.

No. Fee Rs.

LICENSE is hereby granted to for the storage, in the place described below, of gallons of petroleum, not being dangerous petroleum, subject to the rules for the storage of petroleum published in notification No. , dated , and to the further conditions on the back of this license.

Secretary to the Government of the Punjab.

The 190 .

(Description of the place above referred to.)

ENDORSEMENT ON FORM D.

Conditions of License.

1. Each tank shall either be separately surrounded by a wall or embankment of substantial construction, or shall be partially sunk in an excavation. The enclosure thus formed shall be of dimensions sufficient to contain 10 per cent. more oil than the tank is capable of containing, and shall be so constructed as to prevent the escape therefrom of any oil in the form of liquid, whether under the action of fire or otherwise. Settling or measuring tanks* may be situated within the wall or excavation, but otherwise the space enclosed by such wall or excavation, and not occupied by the tank, shall be kept entirely clear and unoccupied.

2. In the case of all storage sheds within the installation, either the doorways and other openings of the building shall be built up to a height of three feet above the level of the ground outside it, or the floor shall be sunk to a depth of three feet below the level of the ground, or the building itself shall be surrounded with a masonry wall or embankment, or both, not less than three feet high.

3. The height of any storage tank shall not be more than three-fifths of its diameter.

4. A distance of not less than one hundred feet shall be kept clear between one storage tank and another, or between a storage tank and a storage shed, the distance being measured between the nearest points of the perimeters of the storage tanks or storage sheds, as the case may be.

5. A distance of not less than one hundred and fifty feet shall be kept clear between any storage tank or shed and any protected work.

6. The distances specified in conditions 4 and 5 may be reduced by the Local Government on the recommendation of the Chief Inspector of Explosives, in cases where screen walls are provided or other special precautions taken, or where there are special circumstances that, in the opinion of the Chief Inspector of Explosives, warrant the reduction.

7. No fire or lights, other than those necessary for soldering purposes, shall be permitted within the installation except in the office, living quarters, engine-room, boiler-house and smithy.

FORM E.

(RULE 8 OF CHAPTER IV OF PART II.)

License to possess petroleum, not being dangerous petroleum, in a minor installation.

No. Fee Rs.

LICENSE is hereby granted to for the storage, in the place described below, of gallons of petroleum, not being dangerous petroleum, subject to the rules for the storage of petroleum published in Notification No. , dated , and to the further conditions on the back of this license.

District Magistrate or authority appointed under rule 2 of Chapter III of Part II.

The *190* .

[Description of the place referred to.]

*These tanks shall not have a greater capacity than 30,000 gallons.

ENDORSEMENT ON FORM E.

Conditions of License.

1. Every tank of which the capacity exceeds fifteen thousand gallons shall either be separately surrounded by a wall or embankment of substantial construction, or shall be sunk in an excavation. The enclosure thus formed shall be of dimensions sufficient to contain the total quantity of oil capable of being contained in the tank, and shall be so constructed as to prevent the escape therefrom of any oil in the form of liquid, whether under the action of fire or otherwise. The space enclosed by such wall or excavation and not occupied by the tanks shall be kept entirely clear and unoccupied.

2. The distance to be kept clear between a tank and the walls or embankments which surround it shall be, measuring from the ground level,—

(*a*) for horizontal tanks, not less than one-third the height of the tank;

(*b*) for perpendicular tanks, not less than one-half the height of the tank.

3. The height of walls or embankments surrounding the installation shall be not ess than two feet six inches from the ground level.

4. The following distances shall be kept clear between protected works not forming part of the installation and the enclosure walls or embankments:—

Where the number of gallons stored is—	Distance to be kept clear.
5,000 and under	Not less than 15 feet.
Over 5,000 and up to 20,000	Ditto 20 ,,
Over 20,000 and up to 50,000	Ditto 30 ,,

Provided that these distances may be reduced by the Local Government on the recommendation of the Chief Inspector of Explosives in cases where screen walls are provided or other special precautions taken, or where there are special circumstances which, in the opinion of the Chief Inspector of Explosives, warrant the reduction.

5. Soldering shall only be permitted in a separate room or building placed as far from the tanks as can be conveniently arranged, in which no storage or filling shall be permitted. No more tins shall be allowed in the soldering room at any one time than are necessary for expeditious working.

6. No fire or lights, except those necessary in the soldering room and watchman's house, shall be permitted.

7. If the installation contains tanks of which the capacity does not exceed fifteen thousand gallons, either—

(*a*) each tank shall be separately enclosed in the manner prescribed in condition 1, or

(*b*) the entire installation shall be surrounded by a masonry wall or embankment, or a combination of these forming an enclosure of dimensions sufficient to contain and prevent the overflow of all the oil that may be stored at any one time within such walls or embankments.

8. In the case of all storage sheds within an installation which is not surrounded by a masonry wall or embankment as provided in clause (*b*) of condition 7, either the doorways and other openings of the building shall be built up to a height of two feet above the level of the ground, outside it, or the floor sunk to a depth of two feet below the level of the ground, so that the petroleum cannot flow out from the building in case of its escape from the receptacle in which it is contained, or the building itself shall be surrounded with a masonry wall or embankment, or both, not less than two feet high. When the quantity of petroleum stored exceeds 16,000 gallons the height or depth shall be three feet. A combination of these methods is permissible.

FORM F.

(RUDE 9 OF CHAPTER IV OF PART II.)

Special license to possess and transport dangerous petroleum for owners of motor-vehicles.

No. Free of charge.

LICENSE is hereby granted to owner (or hirer) of a motor-vehicle (or vehicles) for the possession of gallons of dangerous petroleum for use therein at* and for its transport on the said motor-vehicle (or vehicles) for the purpose of use therein subject to the rules for the possession and transport of dangerous petroleum published in notification No. , dated , and to the conditions on the back of this license.

When the quantity exceeds 40 gallons. *Secretary to the Government of the Punjab.*

When the quantity does not exceed 40 gallons. *District Magistrate or authority appointed under rule 2 of Chapter III of Part II.*

The *190* .

ENDORSEMENT ON FORM F.

Conditions of License.

1. The dangerous petroleum shall not be kept, used or transported except in gas-tight tinned or galvanized sheet iron, steel, or lead plate drums or receptacles containing each not more than four gallons and fitted with well-made filling holes and well-fitting screw plugs or fitted with screw cap or other cap with metal air-tight undercap. Such drums or receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch: Provided that wood cases shall not be necessary when the drums or receptacles are made of tinned or galvanized sheet iron, or steel, and have the following thickness of metal :—

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 gallons	22 B. W. G.

2. The drums or receptacles shall be so substantially constructed and secured as not to be liable, except under circumstances or gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure.

3. Every such vessel, not forming part of a motor-vehicle, when used for transporting or keeping dangerous petroleum, shall bear the words "Dangerous Petroleum—Highly inflammable" legibly and indelibly stamped or marked thereon, or on a metallic or enamelled label attached thereto.

4. An air-space of atleast one-tenth of its capacity shall be left in each drum or receptacle at the time of filling to allow for expansion of the dangerous petroleum.

5. Before repairs are done to any such vessel, that vessel shall, as far as practicable, be cleaned by the removal of all dangerous petroleum and of all dangerous vapours derived from the same.

6. The storage shed in which the dangerous petroleum is stored shall be well ventilated and constructed of uninflammable materials, provided, however, that the doors and windows may be of wood.

7. Where a storage shed forms part of, or is attached to, another building, and when the intervening floor or partition is of an unsubstantial or inflammable character,

* Situation and description of storage shed above referred to.

or has an opening therein, the whole of such building shall be deemed to be the storage shed, and no portion of such storage shed shall be used as a dwelling or as a place where persons assemble. A storage shed shall have a seperate entrance from the open air distinct from that of any dwelling or building in which persons assemble.

8. The amount of dangerous petroleum to be kept in any one storage shed, whether or not upon motor-vehicles, shall not exceed sixty gallons at any one time.

9. The filling or replenishing of any vessels with dangerous petroleum shall not be carried on, nor shall the contents of any such vessel be exposed, in the presence of fire or artificial light, except a light of such construction, position and character as not to be liable to ignite any inflammable vapour, and no artificial light shall be brought within dangerous proximity of the place where any vessel containing dangerous petroleum is being kept.

10. In the case of all dangerous petroleum kept or transported for the purpose of, or in connection with, any motor-vehicle, (*a*) all due precautions shall be taken for the prevention of accidents by fire or explosion and for the prevention of unauthorized persons having access to any dangerous petroleum kept or transported and to the vessels containing, or having actually contained the same, and (*b*) every person managing or employed on, or in connection with, any motor-vehicle shall abstain from every act, whatever which tends to cause fire or explosion and which is not reasonably necessary, and shall prevent any other person from committing such act.

11. The storage shed shall be liable to inspection by an officer, not being of lower rank than an Inspector of Police, authorized by the Local Government in this behalf.

FORM G.

(RULE 1 OF CHAPTER V OF PART II.)

General license to transport petroleum other than dangerous petroleum.

No. Fee Rs. 100.

A GENERAL license is hereby granted to to transport petroleum, other than dangerous petroleum, subject to the rules contained in Chapter V of Part II of Government Notification No. , dated , and the condition at the back of this license.

This license shall continue in force till the .

District Magistrate or other authority appointed under rule 2 of Chapter III of Part II.

The 190 .

ENDORSEMENT ON FORM G.

Conditions of License.

The petroleum, if not in bulk, shall be packed in air-right tins or drums of steel or iron or other receptacles not easily broken, or in tank-carts of a pattern approved by the Local Government in this behalf, or in bottles securely stoppered and carefully packed so as to avoid risk of breakage.

FORM H.

(RULE 2 CHAPTER V OF PART II.)

General license to transport dangerous petroleum otherwise than in bulk.

No. Fee Rs. 50.

A GENERAL license is hereby granted to to transport dangerous petroleum otherwise than in bulk, subject to the rules contained in Chapter V of Part II

of Government Notification No. , dated , and to the further conditions on the back of this license.

This license shall continue in force till the

When the quantity to be transported at a time exceeds 40 gallons. *Secretary to the Government of the Punjab.*

When the quantity to be transported at a time does not exceed 40 gallons. *District Magistrate or other authority appointed under rule 2 of Chapter III of Part II.*

The *190* .

ENDORSEMENT ON FORM H.

Conditions of License.

1. The petroleum must be contained in gas-tight tinned or galvanized sheet iron, steel, or lead plate receptacles containing each not more than forty gallons and fitted with well-made filling holes and well-fitting screw plugs, or with screw cap or other cap with metal air-tight undercap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch :

Provided that wooden cases shall not be necessary where the receptacles are made of tinned or galvanized sheet iron of steel, and have the following thickness of metal :—

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2, but does not exceed 4 gallons	22 B. W. G.
(3) When the capacity exceeds 4, but does not exceed 8 gallons	20 B. W. G.
(4) When the capacity exceeds 8, but does not exceed 20 gallons	16 B. W. G.
(5) When the capacity exceeds 20 but does not exceed 30 gallons	14 B. W. G.
(6) When the capacity exceeds 30 but does not exceed 40 gallons	12 B. W. G.

2. An air-space of at least one-tenth of its capacity must be left in each receptacle at the time of filling.

3. The receptacles must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit.

4. The nature of the contents and the words "Highly inflammable" must be distinctly marked on the receptacles.

FORM I.

(RULE 4 OF CHAPTER V OF PART II.

Pass to be granted by the holder of General License No. for the transport of $\frac{\text{dangerous}}{\text{non-dangeruos}}$ petroleum $\frac{\text{otherwise than in bulk}}{\text{in bulk or otherwise than in bulk.}}$ subject to the rules contained in Chapter V of Part II of Government Notification No. , dated , and to the further conditions on the back of this Pass.

This Pass covers $\frac{\text{drums}}{\text{tins}}$ / $\frac{\text{cases}}{\text{packages}}$ containing)* gallons of $\frac{\text{dangerous}}{\text{non-dangerous}}$ petroleum, being the property of , while in transport from to .

* To be omitted when the petroleum is transported in bulk.

Holder of General License No.

The *190* .

ENDORSEMENT ON FORM I.

Conditions of pass.

I.—For dangerous petroleum in the case of the holder of a license in Form H.

1. The petroleum must be contained in gas-tight tinned or galvanized sheet iron, steel, or lead plate receptacles containing each not more than forty gallons and fitted with well-made filling holes and well-fitting screw plugs, or with screw cap or other cap with metal air-tight undercap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch :

Provided that wooden cases shall not be necessary where the receptacles are made of tinned or galvanized sheet iron or steel and have the following thickness of metal :—

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2, but does not exceed 4 gallons	22 B. W. G.
(3) When the capacity exceeds 4, but does not exceed 8 gallons	20 B. W. G.
(4) When the capacity exceeds 8, but does not exceed 20 gallons	16 B. W. G.
(5) When the capacity exceeds 20 but does not exceed 30 gallons	14 B. W. G.
(6) When the capacity exceeds 30 but does not exceed 40 gallons	12 B. W. G.

2. An air-space of at least one-tenth of its capacity must be left in each receptacle at the time of filling.

3. The receptacles must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit.

4. The nature of the contents and the words "Highly inflammable" must be distinctly marked on the receptacles.

II.—For dangerous petroleum in the case of the holder of a license in Form L.

1. The quantity of dangereus petroleum to be transported under this Pass shall not exceed sixty gallons.

2. The petroleum must be contained in gas-tight tinned or galvanized sheet iron, steel, or lead plate receptacles containing each not more than four gallons and fitted with well-made filling holes and well-fitting screw plugs, or with screw cap or other cap with metal air-tight undercap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch :

Provided that wooden cases shall not be necessary where the receptacles are made of tinned or galvanized sheet iron or steel, and have the following thickness of metal :—

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 gallons	22 B. W. G.

3. An air-space of least one-tenth of its capacity must be left in each receptacle at the time of filling.

4. The receptacles must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit.

5. The nature of the contents and the words "Highly inflammable" must be distinctly marked on the receptacles.

III.—For petroleum other than dangerous petroleum.

The petroleum, if not in bulk, shall be packed in air-tight tins or drums of steel or iron, or other receptacles not easily broken, or in tank-carts of a pattern approved by the Local Government in this behalf, or in bottles securely stoppered and carefully packed so as to avoid risk of breakage.

FORM J.

(RULE 5 OF CHAPTER V OF PART II.)

Special license to transport petroleum other thrn dangerous petroleum.

No. Fee Rs.

LICENSE is hereby granted to to transport from to

* (cases or packages containing)*

* To be omitted when the petroleum is transported in bulk.

gallons of petroleum, subject to the rules contained in Chapter V of Part II of Government Notification No. , dated , and to the further condition on the back of this license.

The license shall continue in force till the day of .

District Magistrate or authority appointed under rule 2 of Chapter III of Part II.

The *190* .

ENDORSEMENT ON FORM J.

Condition of license.

The petroleum, if not in bulk, shall be packed in air-tight tins or drums of steel or iron, or other receptacles not easily broken, or in tank-carts of a pattern approved by the Local Government in this behalf, or in bottles securely stoppered and carefully packed so as to avoid risk of breakage.

FORM K.

(RULE 6 OF CHAPTER V OF PART II.)

Special license to transport dangerous petroleum.

No. Fee Rs.

LICENSE is hereby granted to of to transport cases or packages containing in all gallons of dangerous petroleum from to subject to the rules contained in Chapter V of Part II of Government Notification No. , dated , and to the further conditions on the back of this license.

The amount of petroleum in each case or package is stated below.

This license shall continue in force till the day of .

When the quantity exceeds 40 gallons. *Secretary to the Government of the Punjab.*

When the quantity does not exceed 40 gallons. *District Magistrate or authority appointed under rule 2 of Chapter III of Part II.*

The *190* .

ENDORSEMENT ON FORM K.

Conditions of license.

1. The petroleum must be contained in gas-tight tinned or galvanized sheet iron, steel, or lead plate receptacles containing each not more than forty gallons and fitted with well-made filling holes and well-fitting screw plugs, or with screw cap or other cap with metal air-tight undercap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch :

Provided that wooden cases shall not be necessary where the receptacles are made of tinned or galvanized sheet iron or steel, and have the following thickness of metal :—

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2, but does not exceed 4 gallons	22 B. W .G.
(3) When the capacity exceeds 4, but does not exceed 8 gallons	20 B. W. G.
(4) When the capacity exceeds 8, but does not exceed 20 gallons	16 B. W. G.
(5) When the capacity exceeds twenty, but does not exceed 30 gallons	14 B. W. G.
(6) When the capacity exceeds thirty, but does not exceed 40 gallons	12 B. W. G.

2. An air-space of at least one-tenth of its capacity must be left in each receptacle at the time of filling.

3. The receptacles must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or become defective, leaky or insecure in transit.

4. The nature of the contents and the words " Highly inflammable " must be distinctly marked on the receptacles.

FORM L.

(RULE 9 OF CHAPTER V OF PART II.)

General license to the owner of a Motor-vehicles to transport dangerous petroleum otherwise-than on a motor-vehicle.

No. Fee Rs. 5.

A GENERAL license is hereby granted to to transport dangerous petroleum, otherwise than in bulk, up to $\frac{40}{60}$ gallons at a time, subject to the rules contained in Chapter V of Part II of Government Notification No. , dated , and to the further conditions on the back of this license.

This license shall continue in force till the

When the quantity exceeds 40 gallons. *Secretary to the Government of the Punjab.*

When the quantity does not exceed 40 gallons. *District Magistrate or authority appointed under rule 2 of Chapter III of Part II.*

The 190 .

ENDORSEMENT ON FORM L.

Conditions of license.

1. The petroleum must be contained in gas-tight tinned or galvanized sheet iron, steel, or lead plate receptacles containing each not more than four gallons and fitted

with well-made filling holes and well fitting screw plugs, or with screw cap or other cap with metal air-tight undercap. Such receptacles shall be packed in strong wooden cases, the thickness of the wood to be not less than three-eighths of an inch:

Provided that wooden cases shall not be necessary where the receptacles are made of tinned or galvanized sheet iron or steel, and have the following thickness of metal:

	Not less than
(1) When the capacity does not exceed 2 gallons ...	27 B. W. G.
(2) When the capacity exceeds 2 gallons	22 B. W. G.

2. An air-space of at least one-tenth of its capacity must be left in each receptacle at the time of filling.

3. The receptacle must be so substantially constructed and secured as not to be liable, except under circumstances of gross negligence or extraordinary accident, to be broken or became defective, leaky or insecure in transit.

4. The nature of the contents and the words "Highly inflammable" must be distinctly marked on the receptacles.

COMMERCE AND INDUSTRY DEPARTMENT.

The 27th June, 1906.

No. 171—*Notification.*—In exercise of the powers conferred by section 9 of the Indian Petroleum Act, 1899 (VIII of 1899), and in supersession of previous rule on the subject, the Lieutenant-Governor of the Punjab is pleased, with previous sanction of the Governor-General in Council, to make the following Rules to regulate the possession, sale and transport of carbide of calcium in the Punjab:—

Rules to regulate the possession, sale and transport of carbide of calcium in the Punjab.

PART I.—IMPORTATION OF CARBIDE OF CALCIUM.

(*Applicable to Maritime Provinces*).

PART II.—POSSESSION AND SALE OF CARBIDE OF CALCIUM.

Carbide of calcium to be "commercially pure."

1. No carbide of calcium shall be kept at any place, with or without a license, unless it is "commercially pure," *i.e.*, unless it contains no impurities liable to generate phosphoretted or siliciuretted hydrogen so as to render the gas evolved liable to ignite spontaneously.

Conditions of possession and sale without license.

2. No license shall be required for the possession or sale of carbide of calcium (i) in any quantity not exceeding five pounds, if it is kept in separate vessels, each containing not more than one pound, of the nature described in, and labelled as required by, Rule 1 of Part V; (ii) in any quantity exceeding five and not exceeding twenty-eight pounds where the following conditions are observed and the vessels containing it are labelled as required by Rule 1 of Part V:—

(*a*) the carbide shall be kept only in metal vessels hermetically closed at all times when the carbide is not actually being placed in, or withdrawn from, such vessels;

(*b*) the vessels containing carbide shall be kept in a dry and well ventilated place;

(*c*) due precautions shall be taken to prevent unauthorized persons from having access to the carbide;

(*d*) notice shall be given of such keeping to the licensing authority referred to in Rule 8 of this Part, and free access shall be afforded to any duly authorized Inspecter to inspect the portion of the premises where the carbide is kept and the generator, if any, is situated.

Where a fixed generator is used on the premises—

(*e*) full and detailed instructions as to the care and use of the generator shall be kept constantly posted up in such place as to be conveniently referred to by the generator attendant.

Where it is desired to keep a greater quantity or where the above conditions cannot be complied with, application must be made to the licensing authority for a license.

Licenses for possession.

3. Carbide of calcium in any quantity exceeding twenty-eight pounds may be kept only under a license to possess carbide of calcium granted under these rules. Every application for such a license shall be in Form A in the Schedule, and where the applicant proposes to engage in the manufacture of acetylene gas, the generating apparatus to be used by the licensee must, if manufactured in British India, have been examined by such competent authority as the Local Government or Administration of the Province of manufacture may from time to time specially authorize in this behalf, and certified by it to be suitable; or, if imported, must either have been so examined and certified, or be of a type approved by the Committee on Acetylene Generators appointed by the Department of His Majesty's Inspector of Explosives, London.

Storage of carbide of calcium.

4. Notwithstanding anything contained in Rule 3 of this part, carbide of calcium may, with the special permission of the Local Government, and on such conditions as may be fixed by it, be stored without a license in premises provided for the purpose.

NOTE.—*This rule is intended to be applied only in the case of Port Trust and similar premises.*

Situation of storage buildings.

5. Carbide of calcium shall be stored,—

(1) if in quantities aggregating not more than four hundred and fifty pounds,—in a suitable uninhabited building at least twenty feet away from any other premises, provided that quantities not exceeding two hundred and twenty-five pounds may be stored in a place connected with a shop at a distance of at least ten feet from other premises;

(2) if in quantities aggregating more than four hundred and fifty pounds, and not more than three thousand pounds,—in a suitable uninhabited building, at least forty feet away from any other premises;

(3) if in quantities aggregating more than three thousand pounds and not more than fifty tons,—in an uninhabited building at least one hundred feet away from any other premises.

Not more than fifty tons of carbide of calcium shall be stored in any one building.

Construction of storage buildings.

6. Every building for the storage of carbide of calcium shall be—

(*a*) constructed with stone, brick or iron walls with terraced, tiled or iron roofs, and with tiled, paved, or cemented, or iron (or steel) floors raised at least a foot above the ground level; and

(*b*) well ventilated and water-tight to the satisfaction of the licensing officer.

Arrangements in storage buildings.

7. Carbide of calcium shall be stored only on racks or trestles standing at least one foot above the level of the ground, and no articles of an inflammable or combustible nature shall be kept in the same building.

Licenses for possession.

8. Licenses to possess carbide of calcium shall be in Form B in the Schedule, and may be granted by the District Magistrate or any Magistrate of the first class, or by such other officer as the Local Government may, from time to time, by an order in writing, appoint in this behalf.

Continuance of license.

9. Such licenses shall be in force for one year from the dates of issue:

Provided that the licensing officer may, at any time, for good and sufficient reasons, cancel any such license.

Fee for license.

10. The fee for a license to possess carbide of calcium shall be five rupees.

Renewal of license.

11. Every application for the renewal of license to possess carbide of calcium shall be made in the same manner as an application for an original license.

Date of, and fee for, application for renewal.

12. Every such application shall be made at a date not less than fifteen days prior to the date on which the original license expires. The fee charged for the renewal of a license shall be three rupees.

Packing and marking on sale by retail vendor.

13 Every retail vendor of carbide of calcium, selling any quantity exceeding half a pound to a purchaser, shall deliver it to him in an air-tight tin or drum, packed and marked in accordance with these rules, and bearing the name of the vendor plainly printed on the package.

Packing and opening by retail vendor.

14. Every retail vendor shall keep his carbide of calcium in a receptacle which can be easily opened and closed again so as to be air-tight, and shall open, for the purposes of sale, not more than one receptacle at a time.

PART III.—TRANSPORT OF CARBIDE OF CALCIUM.

Conditions of transport without license.

1. No license shall be required for the transport of carbide of calcium in any quantity not exceeding five pounds, if it is packed in separate vessels, each containing not more than one pound, of the nature described in, and labelled as required by, Rule 1 of Part V.

Conditions of transport under license.

2. Carbide of calcium in any quantity exceeding five ponnds may be transported only under a license to transport carbide of calcium granted under these rules, and shall not be deposited at any time during transit in any building other than a building fulfilling the requirements of Rules 5 and 6 of Part II, and shall not be stored in any such building except in accordance with the conditions as to storage prescribed by Rule 7 of Part II.

Conditions of transport by railway.

3. Notwithstanding anything contained in Rule 2 of this part, carbide of calcium, while in the possession of a railway for transport, shall not be stored in any railway goods-shed, but shall be stacked in the open under waterproof sheets and so placed as to prevent its getting wet.

Special precautions.

4. All lights shall be kept away from carbide of calcium stacked as provided in Rule 3 of this Part.

Method of disposal if wetted in transit.

5. If any carbide of calcium is wetted while in the possession of a railway for transport, it shall be destroyed by immersion in at least twenty times its bulk of water.

NOTE.—*The fact of carbide of calcium having become wet will be indicated by the outward appearance of the drum, and probably by a disagreeable odour, showing a leakage of gas.*

Condition of transport by passenger train.

6. (1) Where carbide of calcium is transported by passenger train, no quantity exceeding four hundred and fifty pounds shall be carried by any one train and the vehicles shall be well ventilated and as far as possible water-tight.

(2) In no circumstances shall a naked lamp or other unprotected artificial light might be taken into a wagon, vessel or conveyance containing carbide of calcium.

Transport licenses.

7. Licenses to transport carbide of calcium shall be either general or special in Form C or Form D in the Schedule, and may be granted by the District Magistrate or any Magistrate of the first class, or by such other officer as the Local Government may, from time to time, by an order in writing, appoint in this behalf.

Grant of general transport license.

8. A general license to transport carbide of calcium may be granted only to a person who holds an annual license to possess a quantity exceeding four hundred and fifty pounds of carbide of calcium.

Grant of special transport license.

9. A special license to transport carbide of calcium may be granted to any person for a particular consignment at the discretion of the licensing officer.

Fee for general transport license.

10. The fee for a general license to transport carbide of calcium shall be three rupees.

Application for general transport license.

11. An application for a general license to transport carbide of calcium shall state—

(*a*) the number and date of the license to possess carbide of calcium held by the applicant; and

(*b*) the period of currency of that license.

Continuance of general transport license.

12. A general license to transport carbide of calcium shall be in force for not more than one year, and shall in no case remain in force after the date on which the license to possess carbide of calcium held by the applicant expires.

Application for special transport license.

13. An application for special license to transport carbide of calcium shall state—

(*a*) the place from which the carbide of calcium is to be transported ;

(*b*) the place to which it is to be transported ;

(*c*) the number of drums or cases ;

(*d*) the quantity in each drum or case ;

(*e*) the name and address of the consignee ;

(*f*) whether the consignee has a license to possess carbide of calcium sufficient to cover the amount transported ; and

(*g*) the date on which it is proposed to despatch the consignment.

Continuance of special transport license.

14. A special license to transport carbide of calcium shall be in force for such period, not exceeding one month from the date of the grant of the license, as may be specified on the same.

Fee for special transport license.

15. The fee for a special license to transport carbide of calcium shall be one rupee.

Issue and contents of passes.

16. The holder of a general license to transport carbide of calcium shall with each consignment conveyed under cover of his license, issue a pass in Form E in the schedule specifying.

(a) the places from and to which the carbide of calcium is to be transported;

(b) the quantity of carbide of calcium covered by the pass;

(c) the name and address of the consignee; and

(d) whether the consignee has a license to possess carbide of calcium sufficient to cover the amount transported.

Validity of license granted in another Province.

17. Carbide of calcium may be transported within the Punjab under cover of any license granted by the prescribed authority in any other Province, provided that the conditions of such license are observed throughout the period during which the carbide of calcium is in transit.

PART IV.—INSPECTION.

Powers of inspecting officers.

1. The District Magistrate, the Sub-Divisional Magistrate or any Magistrate subordinate to the District Magistrate appointed by him in this behalf by order in writing, or any Police Officer of or above the rank of Inspector appointed by the District Magistrate in this behalf by order in writing, or any other officer appointed by the Local Government in this behalf, may at any time enter any premises, in respect of which a license to possess carbide of calcium has been granted, for the purpose of inspecting the same.

Requisition of samples.

2. Any officer so inspecting may require a sample or samples to be delivered to him from any drum or case of carbide of calcium stored in the premises inspected.

Facilities to be afforded to inspecting officers.

3. The licensee of any premises inspected shall personally, or through a representative, show to the officer so inspecting every place and every vessel in which carbide of calcium in his possession is kept, deliver any samples required, and give such assistance as that officer may require.

Inspection during transit.

4. Where a license to transport carbide of calcium has been granted, any officer authorized under Rule 1 of this part may. at any time and on or before the arrival of the carbide of calcium at his destination, detain any conveyance, used for such transport, for the purpose of inspecting the license granted for the transport of the consignment or the pass issued by the licensee and seeing whether the provisions of these rules and the conditions of the license have been complied with.

PART V.—GENERAL.

Description and marking of vessels.

1. Where carbide of calcium—

(a) is imported or kept at any place after seven days from the date of its importation, or

(b) is transported, or

(c) is sold or exposed for sale

it shall be contained in substantial hermetically closed metal vessels, each containing not more than two hundred and twenty-four pounds, having no copper in their construction and having attached to them labels stating in conspicuous characters the words—"Carbide of calcium—dangerous if not kept dry," together with the following caution :—

"The contents of this package are liable, if brought into contact with moisture, to give off a highly inflammable gas."

and with the addition,—

(*d*) in the case of a vessel kept, of the name and address of the consignee or owner;

(*e*) in the case of a vessel transported, of the name and address of the sender; and

(*f*) in the case of a vessel sold or exposed for sale, of the name and address of the vendor.

Refusal of license.

2. A licensing officer may, for reasons to be reported to the Local Government, refuse a license in any case, the reasons for refusal being communicated to the applicant if a request to that effect is preferred by him; and the Local Government may on receipt of such report, and of any representation made to it by the applicant, pass such orders on the case as it thinks fit.

Report of accident.

3. Any explosion or accident occurring in connection with the importation, transport, possession or sale of carbide of calcium shall be reported by the person in charge of the same for the time being without delay at the nearest police station.

Procedure on death or disability of licensee.

4. Where a licensee dies or becomes insolvent or becomes mentally incapable or otherwise disabled, the person carrying on the business of such licensee shall not be liable to any penalty or forfeiture under the Act or these rules for acting under the license during such time as may reasonably be necessary to allow him to make an application for a new license in his own name for the unexpired portion of the original license. Such new license shall be granted on payment of one rupee.

Loss of license.

5. Where a license granted under these rules is lost or accidentally destroyed, a duplicate may be granted on payment of a fee of eight annas.

Levy of license-fees.

6. The fees chargeable under these rules shall ordinarily be levied by means of impressed stamps. An application for the grant or the renewal of a license shall bear the proper stamp: provided that, if the application is refused, the value of the separate stamp (if any) which may have been already provided by the applicant for the desired license or renewed license, *minus* the deductions prescribed by section 54 of the Indian Stamp Act, 1899 (II of 1899), may be refunded to the applicant. An application should not be made on the stamped paper intended for the license or renewed license; but where this has been wrongly done, the value of the stamp may be refunded *minus*—

(*i*) the value of the stamp which should have been affixed to the application, and

(*ii*) the deductions prescribed as aforesaid.

Where the fees leviable under these rules have been made over to any Local Body, the fees shall be paid in such manner as that Local Authority may from time to time direct.

Production of license.

7. Any person holding a license or acting under a license granted under these rules shall be bound to produce the same when called upon to do so by any Magistrate or police officer of or above the rank of an officer in charge of a police station.

THE SCHEDULE.

FORM A.

REGISTER NO.———

Application to the———————of———————for a license to possess Carbide of Calcium.

Name in full of applicant, with particulars of his residence. If a firm or company, its name or that of its Agent or Secretary.	
Situation of building for which the license is required.	
Quantity to be covered by license.	
Is the carbide for use or for sale unopened in the vessels in which it is received, and, if not, what will be done with it ?	
In what vessels will the carbide be kept, what is the capacity of the same, how are they closed against moisture, and of what material are they made ?	
In what part of the building will the carbide be kept ? How are the premises constructed ? Are the premises used for other purposes, and, if so, for what purposes ?	
Is the carbide to be used for the manufacture of acetylene gas ? How is the generator constructed, and what is its capacity ? Give sketch. Give particulars as to the building in which the generator will be placed, and state whether it is detached from other buildings, and whether it is used for other purposes. How is it proposed to dispose of the residue ? Will the generator be in the sole charge of a person competent to manage it ?	

(Signature of applicant.)

Dated————————*190* . *(Postal address.)*

FORM B.

No.——

A license to possess not more than——————pounds of carbide of calcium at any one time in the building described on the reverse is hereby granted to——————, subject to the rules and conditions endorsed hereon. This license shall continue in force till, and become void after, the——————

(Description of the building referred to be on the back of this license.)

Signature.

——————*of*——————,

Dated the——————*190* .

ENDORSEMENT ON FORM B.

RULES.

[Here enter Rules 1, 2, 3, 5 to 14, of Part II, 1 to 3 of Part IV, and 1 to 7 of Part V.]

CONDITIONS.

1. This license is given subject to the provisions of the Indian Petroleum Act, 1899 (VIII of 1899), and the above-mentioned rules for the possession and sale of carbide of calcium made thereunder.

2. If the licensing officer or any officer appointed under Rule I of Part IV calls on the license-holder by notice in writing to execute any repairs to the building licensed, which may, in the opinion of such officer, be necessary for the safety thereof, the license-holder shall execute the repairs within such period, not being less than one week from the date of receipt of the notice, as may be fixed by the notice.

3. Subject to the provisions of Rule 2 of Part II, the licensee shall not deliver any quantity of carbide of calcium exceeding twenty-eight pounds to any one who has not a license under section 5 or section 6 of the Act or any quantity of such carbide of calcium exceeding half a pound, except in accordance with the rules as to the manner in which carbide of calcium is to be packed.

4. Vessels containing carbide of calcium shall be opened only for the time necessary for the removal of any quantity of carbide of calcium or for the refilling of other vessels. During such removal or refilling every reasonable precaution shall be adopted for preventing moisture being brought into contact with the carbide of calcium, as well as for guarding against the risk of ignition of any gas which may be liberated.

5. Every storage vessel of a greater storage capacity than two pounds shall be secured with a lock, or be kept in a locked receptacle, so as to prevent unauthorized persons having access to the contents.

6 Due precaution shall at all times be taken for the prevention of accidents from fire, and no smoking, light, or fire in any form shall be permitted at any time within or near the building in which the carbide of calcium is stored.

7. If carbide of calcium is used for the manufacture of acetylene gas, the following precautions for insuring safety shall be adopted.

(*a*) The apparatus used must, if manufactured in India, have been examined by*——— and certified by it to be suitable, or, if imported, either have been so examined and certified or be of a type approved by the Committee on Acetylene Generators appointed by the Department of His Majesty's Inspector of Explosives, London.

* *Vide* Rule 3 of Part II.

(*b*) Every apparatus for generating and storing acetylene gas other than a portable apparatus holding a charge of less than two pounds of carbide of calcium shall be placed in an out building which shall be separated as far as may be practicable from any inhabited building and shall be well ventilated.

(*c*) No fire or such artificial light as would ignite inflammable gas shall be taken into or near the building in which a gas-making apparatus is placed.

8. Every apparatus (including generator and gas-holder) used for the manufacture of acetylene gas shall, as far as practicable, be constructed and used so as to provide against special risk ; that is to say :—

(*a*) Copper shall not be used in any part of the apparatus.

(*b*) The various parts shall be of adequate strength.

(*c*) The escape of gas from the apparatus shall be carefully guarded against.

(*d*) Satisfactory provision shall be made against the dangerous development of heat.

(*e*) Satisfactory provision against undue pressure shall be made by the employment of an adequate safety valve connected with a pipe discharging into the open air, and a suitable pressure gauge shall be attached to the apparatus.

(*f*) Provision shall be made for the residue of the carbide of calcium being mixed with at least ten times its bulk of water on being removed from the apparatus.

(*g*) No person shall have charge of an apparatus unless he has been properly instructed in its management.

FORM C.

No._____

A general license to transport_____pounds of carbide of calcium by rail, by road or by water,_____is hereby granted to_____, subject to the rules and conditions endorsed hereon.

This license shall continue in force till, and become void after, the_____

Signature

*Dated the*_____*190* . _____*of*_____

ENDORSEMENT ON FORM C.

RULES.

[Here enter Rules 1, 2, 6 to 8, 10 to 12 and 16, of Part III, Rules 4 of Part IV, and Rules 1 to 7 of Part V.]

CONDITIONS.

1. This license is given subject to the provisions of the Indian Petroleum Act, 1899 (VIII of 1899), and the above-mentioned rules for the transport of carbide of calcium made thereunder.

2. Where the carbide of calcium is conveyed by steamer, it shall be stowed, in any such part of the steamer, and in such manner, as may be approved by the licensing officer.

3. Where the carbide of calcium is conveyed by rail, it shall be subject to all the regulations which may, from time to time, be prescribed, generally or specially, in that behalf by the railway authority of the line over which it is conveyed.

FORM D.

No.————

A special license to transport———— ————pounds of carbide of calcium from————————to————————is hereby granted to ————————, subject to the rules and conditions endorsed hereon, and by the following route, namely :—

The weight of carbide of calcium in each package shall not exceed————.

This license shall continue in force till, and become void after, the———— day of————————190 .

Signature

Dated the————————*190* . ————————*of*————————

ENDORSEMENT ON FORM D.

RULES.

[Here enter Rules 1, 2, 6, 7, 9 and 13 to 15, of Part III, Rule 4, of Part IV, and Rules 1 to 7 of Part V.]

CONDITIONS.

1. This license is given subject to the provisions of the Indian Petroleum Act, 1899 (VIII of 1899), and the above-mentioned rules for the transport of carbide of calcium made thereunder.

2. Where the carbide of calcium is conveyed by steamer, it shall be stowed in any such part of the steamer and in such manner as may be approved by the licensing officer.

3. Where the carbide of calcium is conveyed by rail, it shall be subject to all the regulations which may, from time to time, be prescribed, generally or specially, in that behalf by the railway authority of the line over which it is conveyed.

FORM E.

No.————

This pass covers————packages containing————pounds of————carbide of calcium being the property of (*consignee's name*)———————— ————while in transport from————————to————————.

The said (*consignee's name*)————————————————has a license to possess carbide of calcium sufficient to cover the amount above-mentioned.

Holder of General License No.————

Dated the ———— *190* .

THE INDIAN PETROLEUM ACT, 1899.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this volume and alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S in Brevier denotes the section.

A

Act, Extent of, S. 1, **5**, **6**.

has been declared in force in the Santhal Parganas, *B*, **5**.

Extension of Ss. 1 to 3 and 25 and all the provisions of the Act, *C*, **6**.

Extension of rest of the, *D*, **6**.

Notification in Gazette extending repealed Act to Cuttack—Present Act not expressly preserving the same—General Clauses Act, S. 24, *E*—*H*, **6**.

B

Bengal, Local rules and orders prevalent in, **33—61**.

Bombay, Local rules and orders prevalent in, **61—93**.

C

Carbide of Calcium. Application of sections of Petroleum Act to, and limit up to which it may be transported or kept by any person, *H*, **23**.

Central Provinces, Local rules and orders prevalent in, **123—144**.

Certificate as to result of testing petroleum, S. 14, **18**.

Confiscation of petroleum, S. 17, **19**, **20**.

D

Dangerous petroleum, Scope of the term, S. 2, **7**.

in quantities exceeding forty gallons, importing or transporting of, S. 6, **11**.

Vessels containing, to be labelled, S. 7, **12**.

Definition, of the expression "petroleum," S. 2, **7**.

———" dangerous petroleum," (*Ibid*).

Scope of the expression "to import," S. 2, **7**.

——— "to transport," S. 2, **7**.

Meaning of the term "prescribed," S. 2, **7**.

——— "ship," S. 2, **7**.

For matters supplemental to definition, see S. 3, **9**, **10**.

F

"*Flashing point*," Meaning of the expression, of petroleum, S. 3, **9**, **10**.

G

Governor-General in Council, Power to vary tests and prescribe new tests, S. 4, **10**, **11**.

Power to apply the Act to other substances, S. 22, **23**, **24**.

I

Import, Meaning of the term, S. 2, **7**.

Importation, Petroleum—Land, *R*, **13**.

Rules for, of petroleum in various places, *S*, **15**.

Rules regulating, of carbide of calcium, *T*, **15**.

J

Jurisdiction, Criminal, under the Act, by whom exercised, S. 18, **20**.

K

Kerosine oil, possession of, exceeding statutory quantity—Notification under Act VIII of 1889, *Z*, **19**.

L

License, Power for Local Government to make rules *re* the granting of licenses to import or to transport petroleum, S. 9, **13—16**.

Rules regulating the grant of licenses to possess or transport of petroleum, *U*, **15**, **16**.

Local Government, Power for. to make rules for importation of petroleum, etc., S. 9, **13—15**.

Local Rules and Orders, Bengal, **33—61**.

Bombay, **61—93**.

Madras, **93—123**.

Central Provinces, **123—144**.

Punjab, **144—176**.

M

Madras, Local rules and orders prevalent in, **93—123**.

Municipalities, Power to limit operation of enactments relating to possession or transport of petroleum, S. 23, **24**.

N

Notice, to be given when officer proposes to test samples of petroleum, S. 13, **18**.

Notification, *re* petroleum imported into various places, *L*, *M*, **10**.

making an addition to the first schedule, *N*, **11**.

under S. 12, *Y*, **17**, **18**.

O

Officers, For, appointed in various Provinces see, *X*, **17**.

P

Penalty, for illegal importation, possession or transport of petroleum or refusal to comply with the provisions of S. 12 of this Act, S. 15, **19**.

for contravention of S. 7 of this Act, S. 16, **19**.

Petroleum, Scope of the term, S. 2, **7**.

Rules as to carriage of, in native passenger ships, *J*, **8**, **9**.

Rules as to the control of vessels entering Calcutta with—, *K*, **9**.

Meaning of the expression "flashing point" of, S. 3, **9**, **10**.

Notification *re* imported into various places, *L*, *M*, **10**.

Petroleum—(Concluded).

Power for Governor-General in Council, to make rules, S. 8, **12.**

Transport of, between Provinces, *Q*, **12**, **13.**

Importation—Land, *R*, **13**.

Power for Local Government to make rules, S. 9, **13—16.**

Rules for importation, possession and transport of, in various places, *S*, **15.**

Carbide of Calcium, Rules regulating import, possession, sale and transport of *T*, **15.**

Rules regulating grant of licenses to possess or transport, *U*, **15**, **16.**

Possession and transport of, S. 11, **17.**

Power to inspect and require dealer to sell samples of, S. 12, **17**, **18.**

Notice to be given when officer proposes to test samples of, S. 13, **18.**

Certificate as to result of testing, S. 14, **18.**

Confiscation of, S. 17, **19**, **20.**

Model of test-apparatus, S. 19, **20—22.**

Verification of test-apparatus, S. 20, **20—22.**

Fees for verification of apparatus for testing petroleum, *A*, **21.**

Form of certificate of verification of, testing apparatus, *B*, **21.**

Form of Register of certificates of verification of, testing apparatus, *C*, **22.**

Fee for inspection of model test-apparatus, *D*, **22.**

Power to exempt, from operation of Act, S. 21, **22**, **23.**

Power to limit operation of enactments relating to possession of transport of, in Municipalities, S. 23, **24.**

Prescribed, Meaning of the term, S. 2, **7.**

Procedure, after petroleum has been discharged or landed, S. 10, **16**, **17.**

Punjab, Local rules and orders prevalent in, **144—176.**

R

Repeal, of ceetain enactments, S. 25, **25.**

Rules, as to carriage of petroleum in native passenger ships, *J*, **8**, **9.**

as to the control of vessels entering Calcutta with petroleum, *K*, **9.**

Power of Governor-General in Council to make, *re*, the carrying out of the provisions of this Act, S. 8, **12**, **13.**

Transport of petroleum between Provinces, *Q*, **12.**

Power for Local Government to make rules to regulate importation of petroleum, etc. S. 9, **13—16.**

for the importation and transport of petroleum in various provinces, *S*, **15.**

regulating the import, possession, sale and transport of carbide of calcium, *T*, **15.**

regulating the grant of licenses to possess or transport petroleum, *U*, **15.**

as to refining and testing petroleum, *W*, **16.**

Previous publication of, S. 24, **24**, **25.**

Publications of draft, under the Act how effected, *J*. **25.**

S

Shale oil, Notification under S. 21, exempting, *E*, **23.**

T

Tests, Power to vary and prescribe new, S. 4, **10, 11.**

Notice to be given when officer proposes to test samples, of petroleum, S. 13, **18.**

Test apparatus, Model, S. 19, **20.**

verification of, S. 20, **20—22.**

Fees for the verification of apparatus for testing petroleum, *A*, **21, 22.**

Form of certificate of verification of petroleum testing apparatus, *B*, **21.**

Form of Register of certificate of verification of petroleum testing apparatus, *C*, **22.**

Fees for inspection of model test apparatus, *D*, **22.**

Nature of, **25, 26.**

Directions for drawing the sample and preparing it for testing, **26, 27.**

Directions for preparing and using, **27—30.**

Directions for determining the flashing point of petroleum which is not fluid at ordinary temperatures, **31.**

Transport, Meaning of the term, S. 2, **7.**

of petroleum between provinces, *Q*, **12, 13.**

THE LAWYER'S COMPANION SERIES.

THE

EUROPEAN VAGRANCY ACT, 1874

(ACT IX OF 1874.)

(WITH THE CASE-LAW THEREON)

COMPILED AT

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THE EUROPEAN VAGRANCY ACT, 1874.

TABLE OF CASES NOTED IN THIS VOLUME.

NIL.

THE EUROPEAN VAGRANCY ACT, 1874.

CONTENTS.

PREAMBLE.

PART I.

PRELIMINARY.

SECTIONS.

1. Short title.
   Local extent.
   Commencement.
2. Repeal of Acts.
3. Interpretation-clause.

PART II.

PROCEDURE.

4. Power to require apparent vagrant to go before Magistrate.
5. Summary inquiry into vagrant's circumstances.
   Declaration of vagrancy.
   Order to go to work-house.
6. Forwarding vagrant to place of employment.
7. Assistance to obtain employment.
8. Subsistence allowance.
9. Power to give certificates.
   Form of certificate.
10. Power to invest certain officials with jurisdiction of Justices under sections 5, 7, 8 and 9.

PART III.

GOVERNMENT WORK-HOUSES.

11. Provision of Government work-houses.
    Scale of diet.
12. Superintendence of work-houses.
13. Search of vagrants.
14. Discipline.
15. Refusal to accept employment.

PART IV.

REMOVAL FROM INDIA.

16. Removal of vagrants.
    Cost of removal.

SECTIONS.

17. Agreements with vagrants.
Form of agreement.
18. Power to perform agreement.

PART V.

PENALTIES.

19. Refusal to go before Magistrate.
Assaulting Police.
20. Escaping from Police.
Quitting work-house without leave.
Failing to return to work-house.
21. Failing to proceed to port of embarkation.
Refusing to go on boardship.
Escaping from ship.
22. Returning to India.
23. Begging.
24. Procedure on close of imprisonment.
25. Penalty on shipmaster bringing European convicts to India.
Power to exempt certain shipmasters.
26. Recovery of fines.
Payment of fines.
27. Prosecutions.
28. Limits of jurisdiction.
29. Validity of proceedings where Magistrate is not the nearest.

PART VI.

MISCELLANEOUS.

30. Deprivation of privileges of European British subjects under Criminal Procedure Code.
31. Liability of importers of Europeans or employers of soldiers becoming vagrants.
Recovery of charges.
32. Liability of consignee in case of Europeans who arrive in charge of animals and become vagrants.
" Consignee " defined.
" Agent " defined.
33. Evidence of declaration under section 5.
34. Exercise of powers conferred on Local Government.
35. Exercise in Native States of powers conferred on Magistrates, Justices and Police.
36. Power to make rules for guidance of officers.
THE FIRST SCHEDULE (form of certificate).
THE SECOND SCHEDULE (form of Agreement).

THE EUROPEAN VAGRANCY ACT, 1874

ACT No. IX OF 1874. [1]

[*The 7th April, 1874.*]

An Act to consolidate and amend the Law relating to European Vagrancy.

Preamble.

WHEREAS it is expedient to consolidate and amend the laws relating to persons of European extraction who wander in a destitute condition throughout India ; It is hereby enacted as follows :—

(Notes).

1.—"Act No. IX of 1874."

(1) **Statement of Objects and Reasons.**

For—, See Gazette of India, 1873, Pt. V, p. 399. **A**

(2) **Proceedings in Council.**

For—, See Gazette of India, 1874, Extra Supplement, August 23rd, pp. 10 and 14. (*Ibid.*) Supplement, pp. 323, 412. **B**

(3) **Places where the Act has been declared in force.**

This Act has been declared in force in—

Angul and the Khondmals by the Angul District Regulation, 1894 (I of 1894), S. 3 ;

British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890), printed, Baluchistan Code, Ed. 1890, pp. 69 and 137 ; the Arakan Hill District by the Arakan Hill District Laws Regulation, 1874 (IX of 1874), S. 3, printed, Burma Code, Ed. 1889, p. 353 ;

the Santhal Parganas by the Santhal Parganas Settlement Regulation (III of 1872), as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (III of 1899), S. 3 ;

Upper Burma generally, except the Shan States, by the Burma Laws Act, 1898 (XIII of 1898), S. 4 (1) and Sch. I.

It has been declared, by notification under S. 3 (*a*) of the Scheduled Districts Act, 1874 (XIV of 1874), to be in force in the following Scheduled Districts, namely :—

the Districts of Hazaribagh, Lohardaga and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum, *see* Gazette of India, 1881, Pt. I, p. 504. The Lohardaga District at this time included the Palamau District. Lohardaga is now called the Ranchi District, Cal. Gaz., 1899, Pt. I, p. 44.

It has been extended, by notification under S. 5 of the same Act, to the Scheduled District of the North Western Provinces Tarai, *see* Gazette of India, 1876, Pt. I, p. 505 ; and to Ganjam and Vizagapatam, *see* Fort St. George Gazette, 1899, Pt. I, p. 1140. **C**

PART I.

PRELIMINARY.

Short title.

1. This Act may be called the European Vagrancy Act, 1874.

Local extent.

It extends to the whole of British India and to the dominions of Princes and States in India in alliance with Her Majesty;

Commencement.

And it shall come into force at once: Provided that sections 4 to 16 (both inclusive), 19, 20, 24 and 29 [1] shall not come into force in Coorg, or in the Andaman and Nicobar Islands, or in any of the dominions of the Princes and States in India in alliance with Her Majesty not situate within the limits of any Presidency, Lieutenant-Governorship or Chief Commissionership in British India, until such day or respective days as the Governor-General in Council, from time to time, by notification in the *Gazette of India*, appoints in this behalf.

(Notes).

1.—"Provided....29."

Section extended to Native States.

These sections have been extended to the Native States within the limits of—

(1) The Madras Presidency
(2) The Lower Provinces of Bengal } *see* Gazette of India, 1870, Pt. I, p. 723;

(3) The Central India Agency, *see* Gazette of India, 1891, Pt. I, p. 552;

(4) The Punjab, *see* Gazette of India, 1872, Pt. I, p. 188; and

(5) They have also been extended to the Hyderabad State, *see* Gazette of India, 1890, Pt. I, p. 527. **D**

Repeal of Acts.

2. Acts No. XXI of 1869 (*to provide against European Vagrancy*) and No. XXVIII of 1871 (*to amend the European Vagrancy Act, 1869*) are hereby repealed.

But all appointments and orders made, work-houses provided, certificates given, powers conferred, rules prescribed and exemptions granted under the former Act, shall be deemed to have been respectively made, provided, given, conferred, prescribed and granted under this Act.

Interpretation-clause. "Person of European extraction."

3. In this Act—

"Person of European extraction [1]" includes—

(*a*) persons born in Europe, America, the West Indies, Australia, Tasmania, New Zealand, Natal or the Cape Colony ;

(*b*) the sons and grandsons of such persons;

but does not include persons commonly called Eurasians or East Indians :

"Vagrant."

"Vagrant" means a person of European extraction found asking for alms, or wandering about without any employment or visible means of subsistence :

"Master of a ship."

"Master of a ship" includes any person in charge of a decked vessel :

"Magistrate."

And in Parts III and V of this Act "Magistrate" means, within the limits of the towns of Calcutta, Madras and Bombay, a Magistrate of Police [2], and, outside those limits, a person exercising powers under the Code of Criminal Procedure not less than those of a Magistrate of the second class.

(Notes).

1.—"European extraction."

Person of "European extraction."

Cf. definition of "European British subject," in the Code of Criminal Procedure, 1898 (Act V of 1898), S. 4 (1) (*i*). **E**

2.—"Magistrate of Police."

For—read now "Presidency Magistrate," see C. P. C, 1898. **F**

PART II.

PROCEDURE.

Power to require apparent vagrant to go before Magistrate.

4. Any Police-officer may, within the limits of the towns of Calcutta, Madras and Bombay, require any person who is apparently a vagrant to accompany him or any other Police-officer to, and to appear before, the nearest Magistrate of Police [1] and may, without those limits, require any such person to accompany him or any other Police-officer to, and to appear before, the nearest Justice of the Peace exercising the powers of a Magistrate of the first class under the Code of Criminal Procedure.

(Note).

1.—" Magistrate of Police".

For—read now " Presidency Magistrate." See Act V of 1898, s. 3. G

Summary inquiry into vagrant's circumstances. Declaration of vagrancy.

5. The Magistrate of Police [1] or Justice shall in such case, or in any other case where a person apparently a vagrant comes before him, make a summary inquiry into the circumstances and character of the apparent vagrant; and if he is satisfied that such person is a vagrant, he shall record in his office a declaration to that effect.

Order to go to work-house.

If he is further of opinion that the vagrant is not likely to obtain employment at once, or if he has reason to believe that a declaration of vagrancy has on any former occasion been recorded in respect of such vagrant, he shall require the vagrant to go to a Government work-house, and shall draw up an order to that effect.

The vagrant shall then be placed in charge of the Police for the purpose of being forwarded to the work-house, and the said order shall be a sufficient authority to the Police for retaining him in their charge while he is on his way to the work-house, and to the Governor of the work-house for receiving and detaining such vagrant.

(Note).

1.—"Magistrate of Police."

For—read now "Presidency Magistrate ", see Cr. P. C, 1898, S. 3. H

Forwarding vagrant to place of employment [1].

6. Where the officer making the inquiry mentioned in section 5 is of opinion that the vagrant is likely to obtain employment in any place subject to the Local Government, or (when the vagrant is in any part of the dominions mentioned in section 1 in any place subject to any adjacent Local Government, such officer may in his discretion, forward the vagrant to such place in charge of the Police, and draw up an order to that effect.

Such order shall be a sufficient authority to the Police for retaining the vagrant in their charge while he is on his way to such place of employment.

(Notes).

1.—"Forwarding vagrant to place of employment."

Transfer of European vagrants to other Provinces—United Provinces.

Under the terms of S. 6, the transfer of European vagrants from the United Provinces to the other Provinces is contrary to law. S. 6 merely authorizes the Transfer of a vagrant from the dominions of any allied Prince or State to the jurisdiction of an adjacent local administration, or from one part of a local administration to another.

Vagrants arrested within the limits of the United Provinces should be dealt with strictly in accordance with the terms of the Act. The only transfer authorized by law, in cases of arrest within the United Provinces, is from one part of the provinces to another; and this should only be permitted on good ground shown as to the likelihood of obtaining employment.

In all other cases, action should be taken under Parts III and IV of the Act, the vagrant being sent to the Government work-house at Allahabad for eventual deportation. United Provinces, G.O. No. 31 A., dated 17th November, 1875. I

Assistance to obtain employment.

7. Upon his arrival at the place of employment, the vagrant shall be taken before the nearest Magistrate of Police [1] or Justice of the Peace exercising powers as aforesaid, to whom the order for transmission shall be delivered.

Such officer shall thereupon to the best of his ability, assist the vagrant in seeking employment, and may in the meantime, if he think fit, keep the vagrant in the charge of the Police.

Should the vagrant fail to obtain suitable employment within a reasonable time not exceeding fifteen days from such arrival, such officer shall forward him to a Government work-house in the manner provided by section 5.

(Note).

1.—"Magistrate of Police."

For—read now "Presidency Magistrate," see Cr.P.C., 1898, S. 3. J

Subsistence allowance.

8. Every person while in charge of the Police, whether before inquiry as to his vagrancy, or while he is on his way, under section 5, to the work-house, or under section 6, to a place of employment, shall be entitled to an allowance for his subsistence at the rate of eight annas *per diem*.

The Magistrate of Police [1] or Justice, before whom any vagrant is taken under section 7, may, if he think fit, order the vagrant to receive a similar allowance while he is seeking employment.

The Local Government shall cause such allowance to be paid out of such funds at its disposal and in such manner as it may from time to time, direct [2].

(Notes).

1.—" Magistrate of Police."

For—read now " Presidency Magistrate," see Cr.P.C., 1898, S. 3. **K**

2.—" The Local Government.... direct."

United Provinces.

The subsistence allowance of eight annas *per diem* to each vagrant should be disbursed under the orders of the Magistrate, and may be charged for in his judicial contingent bill. Special provision to meet the charge is made in the budget. G.O. No. 1 A., dated 23rd May 1871. **L**

Power to give certificates.

9. Any Magistrate of Police [1] or Justice of the Peace exercising powers as aforesaid may, on being satisfied that any person of European extraction is not likely to become a vagrant, give such person a certificate under his hand stating that for a certain time (mentioning it) not exceeding six months from the date of the certificate, and within certain limits (mentioning them), nothing in sections 4, 5, 6 and 7 shall apply to the holder of such certificate; and thereupon, so long as the certificate remains in force, nothing in sections 4, 5, 6 and 7 shall apply to such person within such limits as aforesaid.

Form of certificate.

Every such certificate shall be in the form set forth in the first schedule to this Act annexed, or as near thereto as circumstances will admit.

(Notes).

General.

Section to be read with paragraphs 5 and 6 of the European Vagrancy Rules.

S. 9 should be read with paragraphs 5 and 6 of the European vagrancy rules framed by the Supreme Government (Govt. of India Notn. No. 4828, 20th October, 1870). (See notes under S. 36, (*infra*). Copies of certificates in English, Urdu, and Hindi for use under r. 6 are supplied to Magistrates from the Government Press. United Provinces G.O. No. 1 A., dated 23rd May 1871. **M**

1.—" Magistrate of Police.

For—read now " Presidency Magistrate," see Cr.P.C., 1898, S. 3. **N**

Power to invest certain officials with jurisdiction of Justices under sections 5, 7, 8 and 9.

10. The Local Government may, from time to time, by notification in the official Gazette [1], invest any Justice of the Peace, District Superintendent of Police, or Assistant District Superintendent of Police with the jurisdiction and powers conferred by this Part on a Justice of the Peace exercising powers as aforesaid.

(Notes).

1.—The Local Government....Official Gazette."

Investing Superintendents of Police with jurisdiction and powers of Justice of the Peace under Ss. 5, 7, 8 and 9.

With reference to the Notification of the Government of India, Home Department (Public), under date the 20th October 1870, No. 4829, re-published at page 1476 of the Fort St. George Gazette of the 8th November 1870, and in the exercise of the authority vested in him by S. 10 of the European Vagrancy Act, 1869, the Governor in Council is pleased to invest the Superintendents of Police in the several districts in the Madras Presidency with the jurisdiction and powers conferred by Part II of that Act on a Justice of the Peace exercising the full powers of a Magistrate under the Code of Criminal Procedure. See Public Notification, dated 9th March 1871 (published in the Fort St. George Gazette, 14th March, 1871, p. 404). O

PART III.

GOVERNMENT WORK-HOUSES.

Provision of Government work-houses.

[1] **11.** The Local Government, with the previous sanction of the Governor General in Council, may provide work-houses with their necessary furniture and establishment, at such places as it may think proper, for the temporary reception of vagrants,

or may, by writing under the hand of a Secretary to such Government, certify any building, or part of a building not provided as a work-house under the former part of this section, to be fit for a work-house for the purposes of this Act. Every such certificate shall be published in the local official Gazette, and thereupon such building or part of a building shall, until the Local Government otherwise orders, be deemed a Government work-house under this Act.

Scale of diet.

The Local Government shall allow the same scale of diet for the support of vagrants received in such work-houses as is for the time being allowed for Europeans confined in the local prisons or penitentiaries.

(Notes).

1.—"S. 11."

Notification issued under the power conferred by this section.

(1) **Bombay.**

(i) *Declaring the House of Correction at Bombay to be a work-house for the purpose of this Act.*

See Notification, dated 12th April, 1871, B.G.G., Pt. I, p. 437. P

I.—"S. 11"—(Concluded).

(ii) *Establishing a Government Female work-house at Bombay.*

A small building containing one room upstairs, and one downstairs, each 12 x 12 x 11 feet with verandah 6 ft. wide, surrounded by a wall and surmounting railings 8 ft. high, situated in the south-east corner of the Civil Jail, Bombay, and adjoining the south and west walls of the Criminal Jail.

In supersession of Government Notification No 2617, dated 7th April 1884, His Excellency the Governor in Council, in exercise of the power conferred by S. 11 of the European Vagrancy Act, 1874, certifies, with the previous sanction of the Governor General in Council, that the part of the Civil Jail at Bombay described in the margin is fit for a work-house for the purpose of the said Act.

The said work-house is to be used for female vagrants only and shall be called "The Government Female Work-house, Bombay." (See Notification No. 8845, dated 17th December 1884, B.G.G., 1884, Pt. I, p. 1223. **Q**

(2) **Madras.**

Certifying His Majesty's Penitentiary, Madras, to be fit for a work-house for the purpose of the Act.

See Notification No. 55 Public, 20th December 1900, published in Fort St. George Gazette, 1901, Pt. I, p. 9. **R**

(3) **United Provinces.**

(*a*) See North Western Province List of Local Rules and Order, Ed. 1894, p. 43. **S**

(*b*) Strangers' Home at Allahabad declared fit for a work-house. See Notification No. 608 A., dated 17th April, 1871, N.W.P. Gazette, p. 443. **T**

(*c*) Magistrates should forward to Allahabad any vagrants from their districts whom they may order to be sent to a work-house. G.O. 1 A., dated 23rd May 1871. **U**

(*d*) Declaring barracks in Central Jail, Lucknow, fit for a work-house. Superintendent to be *ex-officio* Governor.

See Notn. No. 3569, dated 1st August 1871, Oudh Gazette, p. 77. **V**

(*e*) Declaring Civil Hospital at Allahabad fit to be a work-house. See Notn. No. $\frac{338}{\text{VI—979}}$, dated 25th February 1887, N.W.P. and O. Gazette, Part I, p. 98. **W**

(4) **Burma.**

See Burma Laws List, Ed. 1897, p. 49. **X**

(5) **Central Provinces.**

Under S. 11 of Act XXI of 1869, the Chief Commissioner is pleased to declare that the following are fit for work-houses for the puposes of the Act :—

At Nagpur, Ward No. 1, in the enclosure set aside in the Central Jail for the confinement of Europeans.

At Jubbulpore, Ward No. 111 of Barrack H, in the lower octagon. See 5-10-71, No. 429, C.P. Gaz., p. 760. **Y**

Superintendence of work-houses.[1]

12. Every such work-house shall be under the immediate charge of a Governor, who shall be appointed, and may be suspended or removed, by the Local Government.

Every such Governor shall, if the Local Government think fit, be subject to the orders of a Committee of Management appointed from time to time by such Government, or, in the absence of a Committee, to the orders of such officer as the Local Government from time to time appoints in this behalf.

(Notes).

1.—"Superintendence of work-houses."

Notification issued under the powers conferred by this section.

(1) **Bombay.**

(i) *Committee of Management of the Government work-house as Bombay.*

Under the provision of S. 12, cl. (2) of the European Vagrancy Act, 1874, "His Excellency the Governor in Council is pleased to appoint the following officers to be the Committee of Management of the Government Workhouse established at Bombay.

The Senior Magistrate of Police (*now Chief Presidency Magistrate*.....*President.*

The Second Magistrate of Police (*now Second Presidency Magistrate*).
The Collector of Bombay.
The Municipal Commissioner of Bombay.
The Inspector-General of Prisons.
} *Members.*

(Notification, dated 24th May 1875, B.G.G., 1875, Pt. I, p. 536.)

(ii) *Appointing a Governor of the Female Work-house at Bombay.*

The Governor in Council is pleased to appoint the Superintendent of the Criminal Jail, Criminal side, for the time being to be Governor of the Government Female Work-house, Bombay.

The said Governor will be subject to the orders of the same Committee of Management appointed in the Fort St. George Gazette Notification No. 2975 of 24th May 1875, (see Notification No. 8846, dated 17th December 1884, Pt. I, B.G.G., 1884, p. 1228). **Z & A**

(2) **Madras.**

(*a*) See Madras List of Local Rules and Orders, Vol. I, Ed. 1898, p. 27; Fort St. George Gazette, 1901, Pt. I, p. 9. **B**

(*b*) Appointment of a Committee for the Management of the Government Work-house. See Public Notification, 9th March 1871, published in the Fort St. George Gazette, 1871, p. 403. **C**

(*c*) Appointing the Superintendent of Prisons to be the Governor of the Government Work-house. See Notification No. 56, Public, 20th December, 1900, published in Fort St. George Gazette, 1901, Pt. I, p. 9. **D**

(3) **Burma.**

See Burma Laws List, Ed. 1897, p. 49. **E**

I.—"Superintendence of work-houses"—(Concluded).

(4) **Central Provinces.**

Under the provisions of S. 12, the Superintendents of the Central Jails at Nagpore and Jubbulpore are appointed Governors of the work-houses there; and at either place, the Commissioner of the Division, the Deputy Commissioner of the district and the Superintendent of Police shall form a Committee of Management, to whose orders the Governor shall be subject. See 5-10-71, No. 429, C.P.Gaz., p. 760. See Central Provinces Gazette 1905, Pt. III, p. 121. **F**

Search of vagrants.

13. Every such Governor may order that any vagrant admitted to the work-house under his charge shall be searched, and that the vagrant's bundles, packages and other effects shall be inspected, and may direct that any money then found with or on the vagrant, shall be applied (subject to the orders of the Local Government) towards the expense of carrying this Act into execution, and may order that all or any of the said effects shall be sold, and that the produce of the sale be applied as aforesaid, but subject to the like orders.

Discipline.

14. Vagrants admitted to work-houses under this Act shall be subject to such rules of management and discipline as may, from time to time, be prescribed by the Local Government with the previous sanction of the Governor General in Council.[1]

The Local Government may authorise [2] any Governor of a work-house to punish (under or not under the supervision and direction of a Committee of Management, as the Local Government thinks fit) any vagrant who knowingly disobeys or neglects any such rule with any one of the following punishments (namely) :—

(*a*) solitary confinement within the work-house for any time not exceeding seven days ;

(*b*) solitary confinement within the work-house for any time not exceeding three days upon a diet reduced to such extent as the Local Government may prescribe [3] ;

(*c*) hard labour for any time not exceeding seven days ;

(*d*) reduction of diet to such extent as the Local Government may prescribe [3] for any time not exceeding five days ;

or in lieu of any such punishment any such vagrant may, on conviction before a Magistrate of such disobedience or neglect, be punishable with rigorous imprisonment in jail for a term which may extend to three months.

(Notes).

1.—"Rules of management....Governor-General in Council."

1.—Bombay.

(1) Rules for the management and discipline of the Work-house at Bombay.

Under the provision of S. 14 of "The European Vagrancy Act, 1869," the Right Honourable the Governor in Council is pleased, with the previous sanction of the Government of India, to prescribe the following Rules for the management and discipline of the Work-house Establishment at Bombay, under the said Act :—

CHAPTER I.

1. A Committee of Management of the work-house is to be appointed by Government, and such Committee may be the Committee of Management of the House of Correction, with such additions or modifications as Government may order from time to time.

2. The Committee appointed by Government shall hold a meeting at the work-house on the first Wednesday in every month, or the following Wednesday, when a monthly Visitor shall be appointed, and all complaints made against the vagrants, or officers in charge of them, shall be enquired into.

3. In case of emergency any member of the committee may summon a special meeting, to be held at such time and place as may be convenient, for the purpose of inquiring into any urgent matter connected with the work-house.

4. The President of the Committee, or in his absence the Chairman of every meeting held, shall sign the record of the proceedings at such meeting, which shall be entered in a book to be kept for the purpose.

CHAPTER II.

Duties of the Clerk or Secretary to the Committee.

Clerk or Secretary.

5. The Clerk or Secretary shall attend all meetings of the Committee, record their proceedings, resolutions, and directions, write out all letters, and attend to all correspondence between the Committee and Government. He shall write out and send all summonses for meetings, attend the visitors when required, and widen the instructions of the Committee, he shall draw up a yearly report on the said work-house, and attend to all correspondence between the Committee and any authority it may be necessary to correspond with, regarding matters connected with the work house.

6. He shall examine all bills for food, clothing, or any articles or materials purchased for the use of the said work-house or inmates, and he shall certify their correctness or otherwise. No purchase shall be made on account of the work-house till the permission of the President or Committee shall have been obtained through the Secretary. The provision required for the use of the work-house shall be obtained, from the Commissariat or otherwise, as the Government may direct.

7. The Secretary shall also examine the accounts at least once a month, and all documents, indents or cheques connected with the work-house shall be initialled or signed by him before they are signed by the President.

I.—"Rules of management....Governor-General in Council"—(Ctd.).

1.—Bombay—(*Continued*).

8. The accounts shall be audited every half-year by a person to be appointed with the sanction of Government for that purpose.

9. The Secretary shall also visit the work-house once a week for the purpose of seeing that the accounts are correctly kept and for examining the supplies, stores, &c., in hand, and should any irregularity come under his observation, he shall bring the same to the notice of the President or Committee.

CHAPTER III.

Duties of the Governor of the Work-house.

Governor of the work-house.

10. The Governor of the work-house shall make himself acquainted with the provisions of Act XXI of 1869 (now Act IX of 1874), so far as they relate to his particular duties.

11. He shall have quarters in the work-house, or as close to it, as possible, and he shall not absent himself for a night or day before obtaining the permission of the President through the Secretary to the Committee of Management, or, in the absence of the President, of one of the Members of the Committee, and should the Governor or Superintendent be, from unavoidable causes, compelled to absent himself without having first obtained permission as above described, he should state the first fact and the cause of it in the journal which he is required to keep, and make a report of the same to the Visitor or to the Secretary for the information of the Committee.

12. In the exercise of the authority committed to him, the Governor is expected to show firmness combined with mildness and good temper, and he is on no account to use language calculated to irritate the inmates of the institution. He shall at the same time take care that all officers subordinate to him are properly supported in the maintenance of discipline, and that all their orders are treated with respect. Any insulting or insubordinate behaviour on the part of the vagrant shall be immediately recorded, and the same shall be brought to the notice of the monthly Visitor of the Committee.

13. On any vagrant being received into the House by order of a Magistrate, the Governor of the work-house shall cause the name of the said vagrant, his age, country, profession, last employ, and any other useful information concerning him, to be recorded in a book or journal to be kept for this purpose.

14. The gate of the Institution shall not be allowed to remain open on any account after sunset, and strangers shall not be permitted to visit the work-house and hold conversation with any of its inmates at any time without the permission of the Governor of the work-house. Relatives of any inmate who may be suffering from sickness may be allowed by the Governor to visit him at any time during the day or night.

15. The key of the work-house gate shall always be kept with the Governor, or in his absence, with his Deputy or the person appointed to act for him.

16. The Governor shall keep a book to be called "The Governor's Journal," in which he shall record all occurrence of importance within the work-house, such as relate to the health, conduct, discipline, or employment of the inmates, as well as to the attendance, behaviour, &c., of the officers of any persons appointed to work under him. Such other books shall be kept and rules made for the Government of the Institution as the Committee from time to time determine upon.

17. All Rules or Bye-laws shall be subject to the confirmation of the Governor in Council, Bombay; and till they are so confirmed, they shall not be put in force. It shall be competent to the Governor in Council to alter, amend or cancel any Rules or Bye-laws which have been made by his authority.

I.—"Rules of management....Governor-General in Council"—(Ctd.).

I.—Bombay—(*Continued*).

18. The Governor of the said work-house shall refer to the Visitor or to the President for the time being for any further instruction he may be in need of, and he shall attend to the directions or orders he may receive from those officers in any matter connected with the Government of the work-house not distinctly provided for in these Rules.

19. He shall at every monthly meeting of the Committee produce for inspection all the books and accounts of the work-house. Should the Governor of the said work-house consider at any time that it is desirable to select any inmate of the work-house to assist in carrying out the orders of the Governor and in superintending the labours of its inmates, the Governor of the said work-house shall apply for sanction to employ such person in the manner indicated and the person so employed shall receive such remuneration as Government may direct.

CHAPTER IV.

Subordinate Officers.

20. All subordinate officers appointed to assist the Governor in the supervision of the said work-house shall strictly obey all orders he may give with regard to the maintenance of order and discipline in the work-house, and they shall be at their post from 15th March to 15th September at half-past 5 o'clock in the morning, and not quit the work-house until the necessary arrangement for the safe custody of the inmates during the night shall have been made.

21. They shall not on any pretence whatever fail to make an immediate report to the Governor of any misconduct on the part of the inmates of the work-house and the said officers shall not converse with the inmates of the Institution on matters unconnected with their duties, nor shall they allow any familiarity on the part of the inmates towards them.

22. If the said officers have any grievance to complain of, they shall in the first instance complain to the Governor of the workhouse, and should that officer refuse to investigate their complaint, they may then appeal to the Committee through their Secretary.

23. They shall not be absent without leave except in case of certified illness or while in Hospital, and they shall be liable to have their pay stopped for every day they may be absent without leave, and they shall also be liable to dismissal at the discretion of the Committee for any conduct which the Committee may regard as being of such a nature as to render it undesirable that the person complained against should be retained on the establishment.

24. The Governor of the work-house shall have power to suspend any subordinate for misconduct.

25. The Committee will hold the Governor of the said work-house responsible if he omit to bring to their notice through the Secretary any breach of the rules herein laid down.

CHAPTER VII.

General Rules for all officers and servants.

26. No Officer or servant belonging to the establishment shall strike any inmate of the institution except it be necessary to do so in self-defence, and no officer or servant shall sell to or purchase any article from the inmates of the work-house.

27. All pecuniary dealings between the officers of the establishment and the inmates of the house are strictly forbidden.

28. The introduction into the work-house of tobacco, liquor, or any other articles of luxury is strictly forbidden.

1.—"Rules of management....Governor-General in Council"—(Ctd.).

1.—Bombay—(*Continued*).

29. For the purpose of discipline the work-house shall be considered a Hospital within the meaning of S. 49 of Act XIII of 1856.

30. All correspondence or intercourse between the officers and friends of the inmates of the House is also prohibited, unless expressly authorised by the Committee.

31. Any officer subordinate to the Governor shall, when unable from sickness to attend to his duty, send immediate notice to the Governor of the work-house, and should such officer be disabled for more than three days, he shall furnish a medical certificate or go into Hospital.

CHAPTER VIII.

32. Vagrants on admission shall be kept separate until it be certified by the Medical Officer that these persons are clean, and that they are fit to be received amongst the other inmates.

33. They shall be presented the morning after they are received to the Medical Officer, who will examine them as to their capabilities for hardwork or the contrary, their state of health, and apparent sanity of mind, and if he considers any inmates of the institution unfit for labour, he will certify to that effect or admit them into Hospital. After being certified by the Medical Officer to be fit for labour they shall be immediately put to such work as the Governor of the home may be able to provide for them; but if handicraftsmen, they shall be employed, as far as possible on such work as they have been accustomed to.

34. If destitute of clothing on admission each inmate shall be provided with cap, cotton frock, and trousers, flannel shirt, and a pair of boots ; also a towel, with soap, cumblies, and jamboo plate and spoon.

35. The clothes and property belonging to any inmate and brought by him into the work-house shall be taken charge of by the Governor, and having been washed, an inventory thereof entered in a book kept for the purpose. This entry shall be read over to the vagrant, and the clothes and property shall be delivered to him on his discharge from the work-house, and in the event of his decease such clothes and property may be sold to cover any expenses incurred, or made over to their friends if any can be found.

36. The labour of the inmates of the Institution shall be regulated as follows :—

At gunfire they shall wash and then clean up the places in which they are allowed to sleep ; 6 to 8 A.M. ; labours in yards if required ; 8 to 9 breakfast ; 9 A.M. to 1 P.M., labour in shed ; 1 to 2 P.M. dinner ; 2 to 5 P.M. labour in shed or yard ; 5 to 6 P.M. Supper ; at 6 P.M. the Lord's prayer is to be read or religious service conducted, and immediately after the close of the service the inmates should be ordered to retire to the respective places appointed for them.

37. All refractory inmates of the work-house shall be locked up in cells or such other places as may be available for them, and shall remain so locked up until the complaints made against them have been inquired into by the Committee of Management.

38. The Governor of the work-house is authorised to separate from the other inmates of the institution any inmate whom he, the said Governor, may consider should, for special reasons, be so separated.

39. The inmates of the work-house shall also be classified from time to time as the Committee of Management may consider advisable.

40. The Governor of the work-house shall keep in hand a sufficient number of tools of the description required for the labour of the inmates.

I.—"Rules of management....Governor-General in Council"—(Ctd.).

I.—Bombay—(*Continued*).

41. He shall also, as may be ordered by the Committee, have on hand a sufficient quantity of such articles, clothing and diet as may be required for one of the vagrants sent to the workhouse.

42. The scale of rations shall be as follows :—

Mutton or Beef with bone.	Bread 2nd sort.	Rice	Gheewhen soup is made.	Pepper, salt.	Sugar.	Vegetable
12 oz.	16 oz.	3 oz	1 oz	1 oz	1 oz	8 oz.

43. The food to be second sort.

44. Tobacco and luxuries of every description are strictly prohibited, but may be given as a reward for exemplary conduct if so ordered by the Committee.

45. The Governor of the workhouse shall attend to all directions of the Medical Officer as regards clothing, diet, and bedding of sick inmates, and such inmates shall not be put to any work unless certified by the Medical Officer to be fit for labour.

46. In case of any death among the inmates, from whatever cause, the governor of the workhouse shall give notice thereof to the Coroner, and the said governor shall also immediately inform the nearest relatives or friends of the deceased, if any can be found, and such relatives or friends may be allowed to take away the corpse, otherwise the governor of the workhouse shall himself make arrangements for their funeral and disposal of the body of such deceased person.

47. The governor of the workhouse shall furnish to the monthly visitor and to the Secretary, for the information of the Committee, a weekly return showing the number of persons in the said workhouse, also the number put to labour, and the number on the sick list.

48. The governor of the said workhouse shall use his best endeavours to obtain outside the workhouse suitable employment for the vagrants sent to the institution, as directed in S. 15 of Act XXI of 1869, and when such employment can be obtained for any of the inmates, the governor of the workhouse shall report the fact and the condition offered, for the information of the Committee of Management; and when any vagrant who has been sent to the said workhouse expresses a wish to be sent out of the country the governor shall also report the circumstances to the clerk or Secretary for the information of the said Committee.

CHAPTER X.

Duties of the Surgeon.

49. The Surgeon of the workhouse shall attend every morning to inspect the vagrants, and at such other times as may be necessary, and he shall, in a book to be called "The Surgeon's Journal" from time to time enter such observations on the sanitary state and regimen of the workhouse or the inmates as he may think desirable or necessary for the information of the Committee or the monthly Visitor.

50. When he shall think that a change in the quality or quantity of provision allowed to any inmate of the workhouse is desirable on medical grounds he shall record the fact, and such change may be at once made by the governor of the workhouse.

1.—"Rules of management....Governor-General in Council"—(Cld.).

1.—Bombay—(*Concluded*).

CHAPTER XI.

Religious services.

51. The inmates of the workhouse shall not be put to labour on Sunday and they shall attend divine service every Sunday at such hour as the ministers of their respective religious denominations may appoint with the sanction of the Committee of Management.

52. They shall also attend their respective ministers for religious instruction on Wednesday, or such other day of the week as may be appointed by the Committee but such religious services and instruction must not be allowed to interfere with the proper hours set apart for the labour of the inmates.

53. (1.) Such books, religious and secular, as the Committee may consider likely to do good, shall be allowed, with the sanction of Government, for the use of the inmates of the workhouse. No interference shall be allowed in matters of conscience and the inmates shall have full liberty to attend any minister of religion whom they may wish to hear, and who is allowed to visit the workhouse for the purpose of imparting religious instructions.

(2.) The Superintendent of the House of Correction is appointed governor of the workhouse, and the Surgeon of that prison Surgeon of the workhouse, and the officers and servants of the establishment of the House of Correction are appointed officers and servants of the work-house. F

(2.) **Above rules made applicable to the female workhouse at Bombay.**

The Right Honourable, the Governor in Council is pleased to declare that the rules for the management and discipline of the workhouse (established at Bombay under Act XXI of 1869) published under Government Notification No. 1621, dated 19th April 1871, as modified by the European Vagrancy Act, 1874, are applicable to the Government Female Work-house, Bombay, entitled as such under Government Notification No. 8845 dated the 17th Inst. See Notification No. 8847, dated 17th Dec. 1884, B.G.O. 1814, pt. I, p. 1223. G

2.—Madras.

Rules for the management and discipline of the Government work-house. See Notification No. 57, Public, 20th Dec. 1900 published in Fort St. George Gazette, Pt. I, p. 9. H

3.—United Provinces.

Rules for management and discipline of work-houses in the United Provinces, See Notn. No. 155 A, dated, 21st August 1871. I

2.—"The Local Government may authorize."

1.—Madras.

Governor of the work-house authorised to punish breaches of discipline.

See Pub. Notn. No. 262, 3rd June 1882, Fort St. George Gazette, 1882, Part I, p. 296. J

2.—Burma.

Governors of work-house in Burma—Power of.

Under the provision of para 2 of the section, the Chief Commissioner authorises governors of workhouses in Burma to punish those who knowingly disobey or neglect any rule for the management and discipline of vagrants made under the provisions of that section with any one of the punishments specified in the section. (Judicial Department Notification No. 242, 12th June 1891—Burma Gazette, Pt. I, p. 224). K

3.—"Cls. (b) and (d)—The Local Government may prescribe."

Burma.

Reduced diet.

Under the provisions of cls. (*b*) & (*d*) of S. 14 of this Act, the Chief Commissioner prescribes the diet specified below as reduced diet for the purposes of the said clauses.

	Morning.	Evening.
	oz.	oz.
Wheat flour	8	8
Salt	¼	¼
Water in sufficient quantity to make porridge.		

(Judicial Department Notification No. 243, 12th June 1891—Burma Gazette, Pt. I, p. 224). L

Refusal to accept employment.

15. The Governor and the Committee of Management (if any) of every such work-house shall use his and their best endeavours to obtain outside the work-house suitable employment for the vagrants admitted thereto.

When such employment is obtained, any such vagrant refusing or neglecting to avail himself thereof, shall, on conviction before a Magistrate, be punishable with rigorous imprisonment for a term which may extend to one month.

PART IV.

REMOVAL FROM INDIA.

Removal of vagrants.

Cost of removal.

16. If after the lapse of a reasonable time no suitable employment is obtainable for any such vagrant, the Local Government may either (when he has entered into such agreement as hereinafter mentioned) cause him to be removed from British India in manner hereinafter provided, the cost of such removal being paid by Government;

or it may cause sections twenty-three and thirty to be read to him and may then release him.

(Note).

1.—"Removal of vagrants."

United Provinces.

All cases in which employment cannot be found for a vagrant, and his deportation is thought necessary, should be reported to Government through the Commissioner of the division. U.G.O. 1 A., dated 23rd May 1871.M

Agreements with vagrants.

17. Any vagrant or other person of European extraction may enter into an agreement [1] in writing with the Secretary of State for India in Council, binding himself—

(*a*) to proceed to such port in British India as shall be mentioned in the agreement;

(*b*) there to embark on board such ship and at such time as is directed by an officer appointed in this behalf by the Local Government of the territories in which such port is situate, for the purpose of being removed from India at the expense of the said Secretary of State in Council;

(*c*) to remain on board such ship until she has arrived at her port of destination; and

(*d*) not to return to India until five years have elapsed from the date of such embarkation.

From of agreement [2].

Every such agreement * * * *shall be in the form set forth in the second schedule to this Act annexed, or as near thereto as circumstances admit.

(Notes).

1.—"Enter into an agreement."

1.—Madras.

Directing that the Commissioner of Police and Justices of the Peace shall obtain the sanction of Government before concluding agreements with vagrants.

With reference to S. 17 of the European Vagrancy Act, 1869, and to Rule VII of the rules made by His Excellency the Governor General of India in Council, for the guidance of officers in the administration of that Act, and re-published at p. 1475 of the Fort St. George Gazette of the 8th November 1870, the Governor in Council directs that the Commissioner of Police at the Presidency Town, and Justices of the Peace exercising the full powers of a Magistrate under the Code of Criminal Procedure in the Muffusil, will, in every case in which it may be deemed necessary to take an agreement with any vagrant or person of European extraction under S. 17 of the Act, obtain the sanction of Government before concluding such agreement. See Public Notification, dated 9th. March 1871 (published in the Fort St. George Gazette, 14th March 1871. p. 404).

1.—"Enter into an agreement"—(Concluded).

2.—United Provinces.

The officers empowered to make agreements beyond the limits of the Presidency towns are Magistrates with full powers, being Justices of the Peace. No agreement must be made without the Lieutenant-Governor's sanction on a report which should be forwarded through the Commissioner of the Division. G. O. 1 A., dated 23rd May 1871.

NOTE (1).—By G. O. No. 850, dated 5th July 1875, the powers and duties conferred and imposed by Ss. 16 and 18 of the Act on the Local Government were delegated to the Commissioner of the Allahabad Division G. O. 1 A., dated 23rd May 1871.

NOTE (2).—It has been ruled that agreements by vagrants should not be executed except at the port of embarkation, and that prior to forwarding a vagrant to Bombay with a view to his deportation, the Governor of the Bombay work-house should be referred to. No. 1240-VI—664 B., dated the 12th May 1897. United Provinces Local Rules and Orders, Vol. I, Pt. VI, p. 166. **N**

2.—"Form of agreement."

Legislative change.

The words "may be on unstamped paper" after every such agreement in the last para—were repealed by the Indian Stamp Act, 1879 (I of 1879), which exempted these agreements from stamp-duty. *See* now, however, the Indian Stamp Act, 1899 (II of 1899), as amended by Act VI of 1900. **O**

Power to perform agreement.

18. The Local Government of the territories in which the said port is situate, may enter into such contracts for conveyance or otherwise, and perform such other acts as may be necessary to carry out such agreement on the part of the said Secretary of State in Council.

PART V.

PENALTIES.

Refusal to go before Magistrate.

19. Any person refusing or failing to accompany a Police-officer to, or to appear before, a Magistrate of Police or Justice of the Peace, for the purpose of preliminary inquiry, when required so to do under section 4, may be arrested without warrant and shall be punishable, whether he be or not an European British subject on conviction before a Magistrate, with imprisonment for a term which may extend to one month, or with fine, or with both.

Assaulting Police.

And any person who, when required under section four to accompany a Police-officer to, or to appear before, a Magistrate of Police[1] or Justice of the Peace, commits an offence punishable under section 353 of the Indian Penal Code, may, whether he be or be not an European British subject, be tried by a Magistrate for such offence. XLV of 1860

(Note).

1.—" Magistrate of Police."

For——read now, " Presidency Magistrate", see Cr. P.C., 1898, S. 93. **P**

Escaping from Police.

20. Any vagrant who escapes from the Police while committed to their charge under the orders specified in sections 5 and 6,

Quitting work-house without leave.

or who leaves a work-house, under this Act, without permission from the Governor,

Failing to return to work-house.

or who having with such permission left a work-house for a limited time or a specified purpose, fails to return on the expiration of such time or when such purpose has been accomplished or proves to be impracticable,

shall for every such offence be punishable, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

Failing to proceed to port of embarkation.

21. Any person entering into an agreement under section 17, and failing to proceed in pursuance thereof to the port therein mentioned,

Refusing to go on board-ship.

or refusing to embark when directed so to do under the same section,

Escaping from ship.

or escaping from the ship in which he has so embarked before she has reached her port of destination,

shall for every such offence be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to six months.

Returning to India.

22. Any person returning to India within five years of the date of his embarkation pursuant to any agreement entered into under section 17, unless specially permitted so to do by the Secretary of State for India, shall for every such offence be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years.

Begging.

23. Any person of European extraction found asking for alms when he has sufficient means of subsistence,.

or asking for alms in a threatening or insolent manner,

or continuing to ask for alms of any person after he has been required to desist,

shall be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term not exceeding one month for the first offence, two months for the second, and three months for any subsequent offence.

Procedure on close of imprisonment.

24. Every person imprisoned under section 19, 20, 21, 22 or 23 shall, at the end of his term of imprisonment, be placed before the nearest Magistrate of Police [1] or Justice of the Peace exercising powers as aforesaid, who shall, if he think fit, forthwith deal with him in the manner prescribed by sections 5 and 6.

The order of transmission shall certify the fact of the previous conviction.

(Note).

1.—"Magistrate of Police."

For——read now Presidency Magistrate, see Cr. P.C., 1898, S. 3. **Q**

Penalty on shipmaster bringing European convicts to India.

25. Every master of a ship landing or allowing to land in any part of British India any person of European extraction who has been convicted in any other part of Her Majesty's dominions of felony, or of an offence which, if committed in England, would be felony, shall, on conviction before a Magistrate, be liable, for every such person so landed or allowed to land, to pay a fine not exceeding five hundred rupees and not less than one hundred rupees, and, in default of payment, to imprisonment for any term not exceeding two months,

unless the defendant satisfy the Magistrate by evidence (which the defendant is hereby declared competent to give) that he had made due enquiry as to the person so landed, or allowed to land, and that he had no reason to believe that such person had been convicted as aforesaid.

Power to exempt certain shipmasters.

The Governor-General in Council may, from time to time, by notificatio nin the Gazette of India, exempt [1] from the operation of the former part of this section the masters of any class of ships, on such terms as to the Governor-General in Council seem fit, and either in respect of all or of any of the persons on board such ships.

The Governor-General in Council may in like manner revoke any exemption made under this section.

(Note).

1.—" By notification....exempt."

Exemptions from first part of S. 25 of the European Vagrancy Act, 1869 (XXI of 1869).

In exercise of the power vested in him by S. 25 of the European Vagrancy Act, 1869, His Excellency the Governor-General in Council is pleased to exempt masters of steam or sailing vessels belonging to companies or registered owners from the operation of the first part of that section in respect of first class passengers on board such vessels. Government of India Notification No. 4830, 20th Oct. 1870. (See Gazette of India, 1870, Pt. 1, p. 723).

N.B.—This notification issued under the Act of 1869 is kept in force by S. 2 of Act IX of 1874. **R**

Recovery of fines.

26. All fines imposed under this Act may be recovered, in the manner provided by the law for the time being in force for the recovery of fines imposed by Criminal Courts [1].

Payment of fines.

All fines recovered under this Act shall be paid to the credit of the Government of India, or as the Governor-General in Council from time to time directs.

(Note).

1.—" In the manner....Criminal Courts."

Legislative change.

These words were substituted for the words "if for offences committed within those limits, in the manner prescribed by any Act regulating the police of such towns in force for the time being" by the Repealing and Amending Act, 1891 (XII of 1891). **S**

Prosecutions.

27. All prosecutions under this Act may be instituted and conducted by such officer as the Local Government from time to time appoints in this behalf [1].

(Notes).

1.—" The Local Government....behalf."

Notifications issued under the powers conferred by the section.

I.—Bombay.

Empowering certain Police officers and all grades of Magistracy to institute and conduct prosecutions under the Act.

(1) Under the provisions of S. 27 of the European Vagrancy Act, 1869 (now Act IX of 1874), the Right Honourable the Governor in Council is pleased to empower all Police Officers above the grades of constables, and all village Police Patels, to institute and conduct prosecution under the Act.

I.—"The Local Government....behalf"—(Concluded).

(2) All grades of the Magistracy are also empowered to institute and conduct prosecutions when emergently necessary. See Notn., dated 12th Dec. 1870, B.G.G., 1870, Pt. I, p. 1315. T

II.—**Madras.**

Appointing Inspectors of Police and Station-house officers to institute prosecutions.

Under the provisions of S. 27 of the European Vagrancy Act, 1869, the Governor in Council directs that prosecutions under that Act shall be instituted and conducted ordinarily by Inspectors of Police, but in their absence by Police Station-house officers. See Judicial Notification, dated 31st May 1870 (published in the Fort St. George Gazette, 31st May 1870, p. 672). U

III.—**United Provinces.**

Prosecutions should be conducted by the District and Assistant Superintendents of Police. No. 1240-VI—664 B., dated the 12th May 1897. United Provinces Local Rules and Orders, Vol. I, Pt, VI, p. 166. V

IV.—**Burma.**

Appointment of officers to institute and conduct prosecution under the Act.

Under the provisions of S. 27 of this Act, and in supersession of this department notification No. 7, dated 31st August 1871, the Chief Commissioner is pleased to appoint District Superintendents of Police, and, in the absence of the District Superintendent, Assistant Superintendents and Inspectors of Police, to institute and any officer of police of or above the rank of Inspector to conduct prosecutions under the said Act. (Judicial Department Notification No. 1, 3rd Jan. 1893—Burma Gazette, Pt. I, p. 47). W

V.—**Central Provinces.**

Under S. 27 it is declared that prosecutions under the Act shall be conducted by the Inspector, Assistant Superintendent or Superintendent of Police, but any Magistrate shall be held authorized to institute and conduct prosecutions. See 5-10-71, No. 429, C.P. Gaz., p. 760. X

Limits of jurisdiction.

28. In imposing penalties under this Part and Part III of this Act, no person shall exceed the limits of jurisdiction prescribed by him by the Code of Criminal Procedure in the case of offenders not being European British subjects.

Validity of proceedings where Magistrate is not the nearest.

29. No proceeding under this Act shall be deemed invalid by reason only that the Magistrate of Police [1] or Justice, before whom a person, apparently a vagrant, was required to appear, or before whom a person was placed under section 24, was not the nearest.

(Note).

1.—" Magistrate of Police."

For——read now "Presidency Magistrate," see Cr. P.C., 1898, S. 3. **Y**

PART VI.

MISCELLANEOUS.

Deprivation of privileges of European British subjects under Criminal Procedure Code.

[1] **30.** Any European British subject who, upon the summary enquiry mentioned in section 5, has been determined to be a vagrant, or who has been convicted under section 22 or section 23, shall, so long as he remains in India, be subject, beyond the limits of the said towns, to the provisions of the Code of Criminal Procedure (other than those contained in Chapter XXXVIII [2] of the same Code) applicable to an European not being a British subject.

If from any cause he is committed or held to bail by a Justice of the Peace to take his trial before a High Court, he shall not be at liberty to object to the jurisdiction of such Justice of the Peace or High Court on the ground of anything contained in the former part of this section.

Save as aforesaid nothing herein contained shall be deemed to confer jurisdiction over European British subjects on Magistrates, who, if this Act had not been passed, would have had no such jurisdiction.

(Notes).

1.—" S. 30."

United Provinces.

Descriptive rolls of—to be published in Gazette.

I.—Returning to India before expiry of the period within which he has agreed with the Secretary of State not to return (S. 22).

II.—(*a*) Asking for alms when he has sufficient means of subsistence.

(*b*) Or in threatening or insolent manner.

(*c*) Or continuing to beg, having been told to desist.

Under S. 30 of Act IX of 1874 (The European Vagrancy Act), conviction of any European for the offences marginally noted, as well as a Judicial finding under S. 5 of the Act that a European is a vagrant, subjects the person convicted or found to be a vagrant to the jurisdiction of the ordinary criminal tribunals and criminal law.

In order to avoid unnecessary committals of such persons to the High Court of Judicature, Magistrates are directed to forward a certified copy of every final order of conviction under Ss. 22 and 23, and of every finding under S. 5 to the Inspector-General of Police, together with a descriptive-roll of the vagrant, with a view to its publication in the United Provinces Gazette for general information. G. O. No. 31 A., dated 8th August 1871.

1.—"S. 30"—(Concluded).

The Inspector-General of Police is directed to publish such orders and descriptive rolls in the Police Gazette and to forward monthly lists of such cases to the Superintendent of the Government Press for publication in the United Provinces Gazette. See G. O. No. 79, dated 7th July 1879. **Z**

2.—"Chapter XXXVIII."

See now Ch. VIII of Act V of 1898. **A**

Liability of importers of Europeans or employers of soldiers becoming vagrants.

31. Whenever any person of European extraction lands in India, or being a Non-Commissioned Officer or soldier in Her Majesty's Army leaves that Army in India, under an engagement to serve any other person, or any Company, Association or body of persons in any capacity,

and whenever a sailor of European extraction not being a British subject is discharged from his ship in any British Indian port,

and becomes chargeable to the State as a vagrant within one year after his arrival in India or leaving the Army, or discharge from his ship, as the case may be, then the person, or Company Association or body, to serve whom he has so landed in India or left the Army, or, in the case of a sailor, the person who is at the date of the discharge the owner or agent of the ship from which the sailor has been so discharged, shall be liable to pay to the Government the cost of his removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant.

Recovery of charges.

Such costs and charges shall be recoverable by suit as if an express agreement to repay them had been entered into with the Secretary of State for India in Council, by the person, Company, Association, body, owner or agent chargeable.

Liability of consignee in case of Europeans who arrive in charge of animals and become vagrants.

32. When any person of European extraction lands in India, being or having been during his passage to India, or from one Indian port to another, in charge of, or in attendance upon, any animal, and becomes chargeable to the State as a vagrant within one year after his arrival in India, then

the consignee of such animal,

or the agents in India for the sale of such animal,

or, if such consignee or agents cannot be found,

the agent to whom the ship in which such animal arrived in India was consigned,

shall be liable to pay the Government the cost of such person's removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant.

Any such consignee or agent shall be entitled to charge the consignor or principal for any payment to the Government under this section.

"Consignee" defined.

For the purposes of this section "Consignee" includes any person who undertakes to dispose of such animal for the benefit of the consignor, and

"Agent" defined.

"Agent" includes any person who undertakes the agency of such ship, though it may not have been consigned to him.

Evidence of declaration under section 5.

33. In any proceeding under this Part, a certified copy of the declaration recorded under section 5 shall be *prima facie* evidence that the European British subject named therein has been, upon the summary enquiry mentioned in that section, determined to be and that he was at the date of the declaration a vagrant.

Exercise of power conferred on Local Government [1]

34. The powers and duties conferred and imposed by sections 16 and 18 on a Local Government may be exercised and performed by such class of officers as the Local Government from time to time, by notification in the official Gazette, appoints in this behalf.

1.—"Exercises....Local Government."

1.—Bombay.

The Commissioner in Sind to exercise the powers conferred on the Local Government by Ss. 16 and 18 of the Act.

Under the provisions of S. 32, Act XXI of 1869 (now S. 34, Act IX of 1874), the Right Honourable the Governor in Council is pleased to order that the powers and duties conferred and imposed by Ss. 16 and 18 of the said Act on the Local Government, shall be exercised and performed by the person who for the time being shall hold the office or also shall discharge the duties which belong to the office of Commissioner in Sind. (Notification, dated 23rd Nov. 1869, B.G.G., 1869, Pt. I, p. 1290).

1.—"Exercises....Local Government"—(Concluded).

2.—Madras.

Empowering the Commissioner of Police to exercise and perform the powers and duties conferred and imposed on the Local Government.

Under S. 34 of the European Vagrancy Act, IX of 1874, His Excellency the Governor in Council appoints the Commissioner of Police, Madras, to exercise and perform the powers and duties conferred and imposed on Local Governments by Ss. 16 and 18 of the said Act. See Public Notification No. 84, dated 4th March 1884 (published in the Fort St. George Gazette, 4th March 1884, p. 153, Part I). **C**

3.—United Provinces.

Powers of Local Government, under Ss. 16 and 18, to be exercised by the Commissioner of Allahabad.

See Notn. No. 859 A., dated 5th July 1875, N.W.P. Gazette, p. 927. **D**

4.—Central Provinces.

Under S. 32, the Chief Commissioner is pleased to declare that the Committee of Management appointed under S. 12 shall exercise and perform the powers and duties conferred and imposed on the Local Government by s. 16. See 5-10-71, No. 429, C.P. Gaz., p. 760. **E**

Exercise in Native States of powers conferred on Magistrates, Justices, and Police.

35. The powers and duties conferred and imposed by this Act on Magistrates, Justices of the Peace exercising the powers of a Magistrate of the first class and, Police-officers, respectively may, in places beyond the limits of British India, be exercised and performed by such persons respectively as the Governor-General in Council from time to time, by Notification in the Gazette of India, appoints in this behalf.

Power to make rules for guidance of officers.

36. The Governor-General in Council may, from time to time, make rules [1] consistent with this Act, for the guidance of officers in matters connected with its enforcement.

All such rules shall be published in the *Gazette of India*, and shall thereupon have the force of law.

(Notes).

1.—"The Governor-General in Council....rules".

EUROPEAN VAGRANCY RULES.

In exercise of the power vested in him by S. 34 of Act XXI of 1869 (an Act to provide against European Vagrancy), His Excellency the Governor-General in Council is pleased to make the following rules for the guidance of officers in the administration of the Act.

I.—"The Governor-General in Council....rules"—(Continued).

(i) The expression "person of European extraction" includes for the purpose of the Act and these rules, (1) persons born in Europe, America, the West Indies, Australia, and New Zealand; and (2) the legitimate son of a father and grandson of a grandfather so born.

(ii) For the arrest and custody of vagrants, European or Eurasian Police Officers shall, whenever it may be practicable, be employed in preference to Native Police Officers.

(iii) Whenever any person, apparently a vagrant, refuses or fails to comply with any requisition made by a Police Officer under S. 4 of the Act;

Whenever any person of Europen extraction commits an offence under S. 23 of the Act in view of a Police Officer, and whenever any Police Officer has reason to think that such offence has been, or is being committed. The person so refusing, failing or offending, may be forthwith arrested, and without a warrant by the Police Officer, for the purpose of being produced in the usual manner before the Officer empowered to deal with the case.

(iv) The "subsistence allowance" of the vagrant shall not ordinarily be made over to him, but shall be kept and disbursed on his account by the Police or other Officer in whose custody he is for the time being.

(v) No certificate shall be given under S. 9, unless there be good ground for believing that the person applying for it is *bona fide* in search of employment, has a fair chance of obtaining it, and is of quiet and orderly behaviour.

(vi) The certificates shall be printed on parchment or paper of very durable character, and shall be in English, with translations in the two principal vernacular languages of the territories under the Local Government.

(vii) The time allowed under S. 16 for search after employment, shall not ordinarily exceed two months, and shall not in any case exceed six months.

(viii) In the Presidency towns, the Commissioner of Police and elsewhere, Magistrates with full powers, being also Justices of the Peace shall be competent to act on behalf of the Secretary of State in Council in making agreements under S. 17.

(ix) All such agreements shall be executed in duplicate, and the Officer executing on behalf of the Secretary of State in Council shall retain one of the copies.

(x) When an agreement has been entered into by a vagrant under S. 17, he shall be forwarded, along with the original agreement, in the charge of a Police Officer to the Officer at the port of embarkation, who is empowered by the Local Government to receive vagrants; and thereafter, and until his embarkation he shall remain in the custody of that Officer, or of such other Officer as the Local Government empowers in this behalf.

He shall during such time be entitled to subsistence allowance at eight annas *per diem*, to be disbursed as directed in rule IV.

1.—"The Governor-General in Council....rules"—(Continued).

(xi) Local Governments within whose jurisdiction ports are situated shall make all necessary arrangements for the reception and custody of vagrants sent for deportation by other Local Governments or authorities in the interior. They will from time to time, as may be necessary, give notice of such arrangements to the forwarding authorities.

(xii) Road expenses shall be provided by the forwarding authority. All further expenses incurred in proceedings under Chap. IV of the Act shall be defrayed by the Local Government of the port of embarkation on account of the Secretary of State in Council.

(xiii) No agreement for deportation shall be entered into with any person of European extraction born in this country, and who has never been out of it, unless he satisfies the Local Government that he is likely to gain a livelihood in some place out of India.

(xiv) The Officers empowered to direct the deportation of vagrants will see that no unnecessary time is lost for providing passage for those who have entered into agreements to be deported. As a rule, Europeans should be sent to Europe, Americans to America, West Indians to the West Indies, Australians to Australia, and New Zealanders to New Zealand. But the local authorities will exercise their discretion in sending vagrants to other countries than their own, when it appears that such a course will be for their advantage and that they will be favourably received on arriving at their destination.

(xv) Descriptive rolls and, as far as possible, photographs of all persons deported shall be kept by the Local Government or Administrations within whose territory the ports are situated. Government of India Notn. No. 4828, 20th October 1870. (See Gazette of India, 1870, Pt. 1, p. 72)

N.B.—These rules were issued under the Act of 1869. They were kept in force by S. 2 of Act IX of 1874. F

(MISCELLANEOUS).

I.—Madras.

Supplementary rules for the guidance of Officers of the Police and Magistracy in carrying out the provisions of the Act.

Supplementary rules framed in accordance with para 22 of the Resolution of the Government of India, Home Department (Public), No. 4817, dated 20th October 1870, for the guidance of officers of the Police and Magistracy in carrying out the provisions of the European Vagrancy Act, 1869.

I. The holders of certificates under S. 9 of the European Vagrancy Act shall be allowed, while seeking employment, to reside in the work-house and shall be subject to the rules prescribed for its management and discipline during such residence.

II. Subject to the provisions of rule 4 of the rules made by the Governor-General in Council under S. 34 of the Act, (see Sec. 36) Police Officers may advance subsistence and travelling allowances, when necessary, under S. 8. All sums thus expended, as also all sums advanced by Full Power Justices of the Peace acting under Part II of the Act and by District Superintendents of Police acting under S. 10, shall be recovered from the officer in charge of the treasury of the district, on bills submitted by such Justices and Superintendents of Police, respectively.

1.—"The Governor-General in Council....rules"—(Continued).

III. Expenses incurred under Part IV of the Act at the place of deportation shall be defrayed by the Officer appointed to arrange for the deportation of vagrants, and shall be recovered on a contingent bill to be submitted by such Officer to the Accountant-General.

IV. When a Police Officer considers it necessary to proceed against a vagrant under S. 4, he will, within the limits of the Town of Madras, send for the Inspector or the European Sergeant of his division, carefully watching the vagrant meanwhile. Outside the limits of that town, the Police Officer will watch the vagrant as above and will send intimation to a European Inspector or Head Constable if available at hand. If no European Police Officer be available, the Police Officer will send intimation to the Inspector of his division, or, in the absence of the Inspector, to the nearest Station-House Officer. Vagrants who attempt to escape may be arrested at once.

V. On the arrival of the European or other superior Police Officer named in rule 4, the vagrant, if he allege that he holds a certificate under S. 9, will be required to produce the same. If he has no certificate, he will be required to appear before the nearest Magistrate or Justice of the Peace, or District Superintendent of Police, or other Officer invested with powers under S. 10 of the Act.

VI. If an offence under S. 23 is committed by a vagrant in view of the Police Officer, or if a complaint is made that such offence has been, or is being committed, the Police Officer shall act as laid down in rule 4.

VII. In the event of unavoidable delay in putting the case before a Magistrate or other Officers invested with powers under S. 10, *reliable* bail may be accepted for the vagrant's appearance.

VIII. Vagrants forwarded to a work-house or other place under Ss. 5, 6, 7 and 24 of the Act shall be escorted by a European Police Officer, whenever this is possible.

IX. No vagrant under escort of the Police shall be permitted to enter an arrack-shop or other place for the sale of intoxicating liquors, nor shall any intoxicating liquor be supplied to a vagrant *en route*.

X. Vagrants *en route* will ordinarily be lodged in police station-house; but will not be locked up unless this measure may be necessary.

XI. The utmost patience and forbearance will be exercised by all Police Officers in dealing with vagrants under the provisions of the Act. They will take no notice of abusive language. Police Officers will be specially mindful to take such reasonable care of vagrants as their physical condition (often weak and sickly), the season of the year and other circumstances may render advisable.

XII. Forms of the declaration and orders to be made under Ss. 5, 6, 7 and 24 of the Act are hereunto appended. A copy of the declaration (Form A) shall invariably accompany every order issued under Ss. 5, 6, or 7.

N. B.—This rule was inserted by Public Notification, dated 14th September 1871.

A.

FORM OF DECLARATION UNDER S. 5.

Whereas A. B., a person of European extraction, has been brought before me, C. D., Esq., a Magistrate of Police (or a Justice of the Peace, or Superintendent of Police) by E. F., an Inspector of Police (or other rank of Police Officer); and whereas on a summary enquiry into the circumstances and character of the said A. B. it has been ascertained that (here enter particulars of circumstances and character, and whether admitted by the vagrant himself 2).

1.—"The Governor-General in Council....rules"—(Continued).

I do, therefore, hereby declare, under the provisions of S. 5, Act XXI of 1869, that the said A. B. is a vagrant.

(Sd.) C. D.,

Given at *Magistrate of Police,*

on this day of *(or Justice of the Peace, or Superintendent of Police).*

N.B.—1. In case where the vagrant voluntarily appears without the intervention of the Police, substituting the words "*has appeared before me.*"

2. Any statement made by a vagrant admitting his vagrancy should be attested by the signature of the vagrant and appended to declaration A.

B.

FORM OF ORDER UNDER S. 5.

To E. F., Inspector of Police, and all whom it may concern.

Whereas A. B. has this day been declared by me, C. D., Esq. (designation), to be a vagrant under the provisions of S. 5, Act XXI of 1869; and whereas it is not likely that the said A. B. will at once obtain employment (or—and whereas there is reason to believe that the said A. B. has been previously declared a vagrant); I do, therefore, hereby require the said A. B. to go to the Government work-house at Madras: and he the said A. B. is delivered to your charge for that purpose.

(Sd.) C. D.,

Given at *Magistrate of Police,*

on this day of *(or Justice of the Peace, or Superintendent of Police).*

C.

FORM OF ORDER FOR TRANSMISSION UNDER S. 6.

To E. F., Inspector of Police (or other rank), and all whom it may concern.

Where as A. B. has this day been declared by me, C. D., Esq. (designation), to be a vagrant under the provisions of S. 5, Act XXI of 1869; and whereas the said A. B., is likely to obtain employment at (place); I do, therefore, hereby direct that the said A. B. shall be conveyed to and that upon arrival he shall be taken before the nearest Magistrate of Police (or Justice of the Peace exercising full powers, or Superintendent of of Police) to whom this order of transmission shall be delivered. The said A. B., is, therefore, placed under your charge for the above purpose.

(Sd.) C. D.,

Given at *Magistrate of Police,*

on this day of *(or Justice of the Peace, or Superintendent of Police).*

D.

FORM OF ORDER UNDER S. 7.

To E. F., Inspector of Police, and all whom it may concern.

Whereas A. B., was produced before me, G.H., Esq., Magistrate of Police (or Justice of the Peace, or Superintendent of Police) at (place) on the day of with an order of transmission under S. 6, Act XXI of 1869, from C. D., Esq., Magistrate of Police (or Justice of the Peace, or Superintendent of Police) by whom the said A. B. has been declared to be a vagrant under the provisions of S. 5 of the aforesaid

I.—"The Governor-General in Council....rules"—(Concluded).

Act; and whereas the said A. B. has failed to obtain suitable employment; I do, therefore, hereby require the said A. B. to go to the Government work-house at Madras: and he the said A. B. is delivered to your charge for that purpose.

(Sd.) G. H.,

Given at *Magistrate of Police,*

on this day of *(or Justice of the Peace, or Superintendent of Police).*

E.

FORM OF ORDER UNDER S. 24.

To E. F., Inspector of Police, and all whom it may concern.

Whereas A. B., having been convicted of an offence under section of Act XXI of 1869 and sentenced to months' imprisonment, has this day been produced before me, C. D., Esq., Magistrate of Police (or Justice of the Peace), under the provisions of S. 24 of the aforesaid Act at the end of his term of imprisonment; I do hereby require the said A. B., to go to the Government work-house at Madras; and he the said A. B, is therefore delivered to your charge for that purpose.

(Sd.) C. D.,

Given at *Magistrate of Police,*

on this day of *(or Justice of the Peace).*

N.B.—Public Notification, dated 20th July 1871 (published in the Fort St. George Gazette, 1st August 1871, p. 1255).

II.—United Provinces.

Vagrants not deported may be sent to Bombay.

The Bombay Government are willing to make arrangements to procure employments for vagrants or to arrange for vagrants working their passage home in cases in which the vagrants have been induced by the offer of a free pass to transfer themselves from these provinces to Bombay; but the arrangements should be on the part of the vagrants a purely voluntary one. In future, therefore, vagrants who are willing to proceed to Bombay should be sent down under a free pass, and the practice of sending them under police escort without any deportation agreement should be discontinued. The vagrants should be subject to no restraint in such cases, but information should be sent to the Commisssoner of Police, Bombay, of the probable time of arrival of the vagrants there, and particulars of the case should be communicated to that officer. G.O. No. 1131-VI—213, dated 24th June 1885.

III.—Burma.

The attention of all Magistrates in this province having full powers and being Justices of the Peace is directed to rule 8 of the rules framed by His Excellency the Viceroy and Governor-General in Council for the guidance of officers in the admininistration of the Act XXI of 1869, published at p. 878 of the British Burma Gazette of 12th Nov. 1870. No agreement must, however, be made under the provisions of S. 17 of the Act without the previous sanction of the Local Government.

The Magistrates of Rangoon, Moulmein and Akyab are hereby empowered under rule 10 of the aforesaid rules to receive vagrants from stations in the interior, and to make all arrangements for their deputation in accordance with the agreements entered into by the said vagrants. Judicial Department Notification, No. 6, 31st Aug. 1871; Burma Gazette, p. 658.

THE FIRST DULE.

(*See sect*)

WHEREAS *E. F.* of , a person of European extraction and holder of this certificate, ppeared before me and satisfied me that he is not likely to become a nt within the meaning of the European Vagrancy Act, 1874, THES TO CERTIFY that for space of months from the date hereof thin the Province [*or* District] of nothing in ons 4, 5, 6 and 7 of the same Act shall be deemed to apply to unless he is found asking for alms, IN WHICH CASE this certificat l be void.

(Sd.) *G. H.*

Dated this day of .

Magistrate of Police for the T f *or* Justice of the Peace for exercising the po of a Magistrate of the class.

THE SECON CHEDULE.

(*See s 17.*)

ARTICLES OF AGREEMENT this day of 18 BETWEEN the Secretary of State f dia in Council of the one part and *C. D.* of, etc., [*the vagrant*] of the r part: Each of the parties hereto (so far as relates to the acts o own part to be performed) hereby agrees with the other of them as fo s:—

1. The said *C. D.* shall pro forthwith to the port of [*the port of embarkation*].

2. The said *C. D.* shall the embark on board such ship and at such time as an officer appointed his behalf by the Local Government shall direct.

3. The said *C. D.* shall re n on board such ship until she shall have arrived at her port of destin on.

4. The said *C. D.* shall n eturn to India until five years shall have elapsed from the date of su embarkation, unless specially permitted so to return by the said Secreta of State.

5. The said Secretary of e in Council shall defray the cost of the transit of the said *C. D.* to the s port, and of his lodging and subsistence during such transit and durin is detention (if any) at the same port, and shall contract with the ow r of the said ship, or his agent, for the passage of the said *C. D.* on rd the said ship, and for his subsistence during the voyage for which h hall embark as aforesaid.

In witness whereof *A. B* by order of the Governor General of India in Council [*or* the Governor o in Council (*or* the Lieutenant Governor of , *or* the Chi Commissioner of), on behalf of the said Secretary of State in Co cil], and the said *C. D.* have hereunto set their hands the day and yea rst above written.

THE EUROPEAN VAGRANCY ACT, 1874.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this volume and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S in Brevier denotes the section.

A

Act, Places where the European Vagrancy has been declared in force, *C*, **5.**

Agent, Defined, S. 32, **30.**

B

Bombay, Declaring the house of correction at, to be a workhouse for purposes of the European Vagrancy Act, **11.**

Establishing a Government female work-house at, *Q*, **12.**

Committee of management of the Government workhouse at, *Z*, **13.**

Appointing a Governor of female workhouse at, *A*, **13.**

Rules for the management and discipline of the workhouse at, **15—20.**

Above rules made applicable to the female workhouse at, *G*, **20.**

Notification *re* conduct of prosecution in, *T*, **27.**

The Commissioner in Sind to exercise the powers conferred on the Local Government by Ss. 16 and 18 of this Act, *B*, **30.**

Burma, Place declared to be workhouse at, *X*, **12.**

Notification issued under powers conferred by S. 12 of this Act, *E*, **13.**

Governors of workhouse in, powers of, *K*, **20.**

Notification *re* conduct of prosecution, *W*, **27.**

C

Central Provinces, Places declared to be workhouses at, *Y*, **12.**

Notification issued under powers conferred by S. 12 of this Act, *F*, **14.**

Notification *re* conduct of prosecution in, *X*, **27.**

Certificate, Power to give, to any person of European extraction who is not likely to become a vagrant—Form of certificate, S. 9, **10.**

Charges, Recovery of charges stated in S. 31 of the Act, S. 31, **29.**

Consignee, Liability of, in case of Europeans who arrive in charge of animals and become vagrants, S. 32, **29, 30.**

defined, S. 32, **30.**

D

Declaration, Evidence of, under S. 5 of this Act, S. 33, **30.**

Definition, of the term "consignee," S. 32, **30.**

——————— "Agent," S. 32, **30.**

Descriptive rolls, to be published in Gazette—United Provinces, *Z*, **28, 29.**

Diet, Scale of, S. 11, **11.**

E

Evidence, of declaration under S. 5, S. 33, **30**.

European Vagrancy Rules, For, see **31—37**.

Extent, Places where the European Vagrancy Act has been declared in force, *C*, **5**.

S. 1 of the Act, extended to Native States, *D*, **6**.

F

Fines, Recovery of, imposed under this Act, S. 26, **26**.

Payment of, S. 26, **26**.

G

Government work-houses, Provision of, S. 11, **11**, **12**.

Scale of diet, S. 11, **11**, **12**.

Bombay—Declaring the House of correction at Bombay, to be a workhouse for the purpose of the Act, **11**.

Establishing a female workhouse at Bombay, *Q*, **12**.

At Madras, *R*, **12**.

At United Provinces, *T—W*, **12**.

At Burma, *X*, **12**.

At Central Provinces, *Y*, **12**.

Superintendence of workhouses, S. 12, **13**, **14**.

Notification issued under the powers conferred by S. 12, **13**, **14**.

Notification prevalent at Bombay, *Z* and *A*, **13**.

——— ——— Madras, *B—D*, **13**.

——— ——— Burma, *E*, **13**.

——— ——— Central Provinces, *F*, **14**.

Search of vagrants, S. 13, **14**.

Discipline in, S. 14, **14**.

Rules for the management and discipline of his workhouse at Bombay, **15—20**.

Above rules made applicable to female workhouse at Bombay, *G*, **20**.

Rules for the management and discipline of, at Madras, *H*, **20**.

Rules for management and discipline of workhouses in the United Provinces, *I*, **20**.

Governor of the workhouse at Madras, authorised to punish breaches of discipline, *I*, **20**.

Governor of workhouse in Burma, powers of, *K*, **20**.

Refusal to accept employment, obtained by Governor and Committee of Management of any workhouse, S. 15, **21**.

Governor-General-in-Council, Power to make rules for guidance of officers, S. 36, **31—37**.

I

Importers, Liability of, of Europeans or employers of soldiers becoming vagrants, S. 31, **29**.

Interpretation, of the term, "Person of European extraction, S. 3, **6**.

Vagrant ——— S. 3, **7**.

Master of ship——— S. 3, **7**.

Magistrate——— S. 3, **7**.

L

Liability, of importers or Europeans or employers of soldiers becoming vagrants, S. 31, **29.**

of consignee in case of Europeans who arrive in charge of animals and become vagrants, S. 32, **29**, **30.**

Local Government, Power to perform agreement, S. 18, **23.**

Power to perform agreement, S. 18, **23.**

Exercise of power conferred on, S. 34, **30.**

Commissioners in Sind to exercise the powers conferred on, by Ss. 16 and 18 of this Act,—Bombay, *B*, **30.**

Commissioners of police to exercise and perform the powers and duties conferred and imposed on,—Madras, *C*, **31.**

Powers, under Ss. 16 and 18 to be exercised by the Commissioner of Allahabad—United Provinces, *D*, **31.**

M

Madras, Places declared to be work-houses at, *R*, **12.**

Notification issued under powers conferred by S. 12 of this Act, *B*—*D*, **13.**

Rules for management and discipline of the Government workhouse, *H*, **20.**

Governor of the workhouse authorised to punish breaches of discipline, *J*, **20.**

Notification *re* agreements with vagrants, *M*, **22.**

Notification *re* conduct of prosecution in, *U*, **27.**

Empowering the Commissioner of Police to exercise and perform the powers and duties conferred and imposed on Local Government, *C*, **31.**

Supplementary rules for guidance of officers of Police and Magistracy in carrying out provisions of this Act, **33—36.**

Magistrate, Interpretation of the term, S. 3, **7.**

N

Native States, Exercise in, of powers conferred on Magistrates, Justices and Police, S. 35, **31.**

P

Penalties, For vagrant refusing to go before Magistrate, S. 19, **23**, **24.**

assaulting Police, S. 19, **23**, **24.**

escaping from police, S. 20, **24.**

failing to return to workhouse, S. 20, **24.**

For vagrant refusing to go before Magistrate, S. 19, **23**, **24.**

Failing to proceed to port of embarcation, S. 21, **24.**

for vagrant failing to proceed to port of embarkation, S. 21, **24.**

refusing to go on board—ship, S. 21, **24.**

escaping from ship, S. 21, **24.**

returning to India within time, S. 22, **24.**

for begging, S. 23, **24.**

Limits of jurisdiction, S. 28, **27.**

Penalty, on ship master bringing European convicts to India, S. 25, **25**, **26**.

"*Person of European extraction*," Interpretation of the term, S. 3, **6**.

Privileges, Deprivation of, of European British subjects under Crim. Pro. Code., S. 30, **28**, **29**.

Procedure, Power to require apparent vagrant to go before Magistrate, S. 4, **7**.

Summary inquiry into vagrant's circumstances—Declaration of vagrancy, S. 5,

Order to go to workhouse, S. 5, **8**.

Forwarding vagrant to place of employment, S. 6, **8**, **9**.

Transfer of European vagrants to other provinces—United Provinces, *I*, **9**.

Assistance to obtain employment, S. 7, **9**.

Subsistence allowance, S. 8, **9**.

Power to give certificates, S. 9, **10**.

Form of certificate, S 9, **10**.

Power to invest certain officials with jurisdiction of Justices under Ss. 5, 7, 8, 9, of this Act, S. 10, **10**.

Investing Superintendents of Police with jurisdiction and powers of justices of the peace under Ss. 5, 7, 8, 9 of this Act, *O*, **11**.

on close of imprisonment, S. 24, **25**.

for recovery of fines, S. 26, **26**.

Prosecution under this Act how conducted, S. 27, **26**.

Notifications issued under S. 27, prevalent in Bombay, *T*, **26**, **27**.

Notification issued under S. 27, of this Act prevalent in Madras, *U*, **27**.

Notification issued under S. 27 of this Act prevalent in the United Provinces, *V*, **27**.

Notification issued under S. 27 of the Act, prevalent in Burma, *W*, **27**.

Notification issued under S. 27 of this Act, prevalent in Central Provinces, *X*, **27**.

Proceedings, validity of, under this Act, where Magistrate is not the nearest, S. 29, **27**, **28**.

Prosecution, Empowering certain police officers and all grades of Magistracy to institute and conduct, under this Act, *T*, **27**.

Appointing Inspectors of Police and Station House Officers to institute,—Madras, *U*, **27**.

to be conducted by District and Assistant Superintendents of Police—United Provinces, *V*, **27**.

Appointment of officers to institute and conduct, under the Act—Burma, *W*, **27**.

Conducted by Inspectors, Assistant Superintendent or Superintendent of Police,—Central Provinces, *X*, **27**.

under this Act how conducted, S. 27, **26**.

R

Rules, For European Vagrancy see **31—37**.

Power to make rules for guidance of officers, S. 36, **31—37**.

S

Ship master, Penalty on, for bringing European convicts to India, S. 25, **25**, **26**.

Power to exempt certain—s, S. 25, **25**, **26**.

Notifications *re*—Exemption of certain,—s, *R* **26**.

U

United Provinces, Places declared to be workhouses at, *T—W*, **12.**

Rules for management and discipline of workhouses in the, *I*, **20.**

Notification *re* agreements with vagrants, *N*, **23.**

Notification *re* conduct of prosecution in, *V*, **27.**

Powers of Local Government under Ss. 16 and 12 to be exercised by the Commissioner of Allahabad, *D*, **31.**

Vagrants not deported may be sent to Bombay, **36.**

V

Vagrant, Interpretation of the term, S. 3, **6.**

Power to require apparent, to go before Magistrate, S. 4, **7.**

Summary inquiry into—'s circumstances—Declaration of vagrancy, S. 5, **8.**

Order to go to workhouse, S. 5, **8.**

Forwarding, to place of employment, S. 6, **8.**

Transfer of European, to other provinces—United Provinces, *I*, **9.**

Assistance to be rendered to obtain employment, S. 7, **9.**

Subsistence allowance, granting of, to. S. 8, **9.**

Magistrate of police or justice of Peace being satisfied that person of European Extraction is not likely to become a—Power to give certificate—Form of certificate, S. 9, **10.**

Power to invest certain officials with jurisdiction of justices under Ss. 5, 7, 8, 9 of the Act, S. 10, **10.**

Scale of diet to, in Government workhouse, S. 11, **11.**

Search of, S. 13, **14.**

Discipline in workhouses, S. 14, **14—21.**

Refusal to accept employment offered by the Governor and Committee of Management of a workhouse, S. 15, **21.**

Removal of, S. 16, **21, 22.**

Costs of removal, *Ibid.*

Agreements with, S. 17, **22, 23.**

Form of agreement, S. 17, **22, 23.**

Notification directing that Commissioner of Police and Justices of the Peace shall obtain sanction of Government before concluding agreements with,—Madras, *M*, **22.**

Officers empowered to make agreements with, *N*, **23.**

Liability of importers of Europeans or employers of soldiers becoming, S. 31, **29.**

Recovery of charges, S. 31, **29.**

Liability of consignee, in case of Europeans who arrive in charge of animals and become, S. 32, **29, 30.**

THE LAWYER'S COMPANION SERIES.

THE

THE INDIAN PRESS ACT, 1910

(ACT I OF 1910)

(WITH THE CASE-LAW THEREON)

COMPILED AT

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THE INDIAN PRESS ACT, 1910.

TABLE OF CASES NOTED IN THIS VOLUME.

			PAGE
		Calcutta Law Journal.	
12 C L J 294	...	Sarat Chandra Mitter v. King-Emperor ...	5
		Indian Cases.	
7 Ind Cas 641	...	Sarat Chandra Mitra v. Emperor ...	5

THE INDIAN PRESS ACT, 1910.

(ACT NO. I OF 1910).[1]

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 9th February 1910.)

An Act to provide for the better control of the Press.

WHEREAS it it is necessary to provide for the better control of the Press ; It is hereby enacted as follows :—

(Notes).

1.—" Act No. I of 1910."

(1) **Object and scope of the Act.**

" The continued recurrence of murderous outrages has shown that the measures which have hitherto been taken to deal with anarchy and sedition require strengthening and that the real source of the evil has not as yet been touched."

" Since 1907 the policy of the Government has been directed to the steady enforcement of the ordinary law against sedition."

" Prosecutions have invariably proved successful but have produced no permanent improvement in the tone of the press, a certain section of which has continued, both by openly seditious writing and by suggestion and veiled incitement, to inculcate hostility to British rule."

" There is no lack of evidence that the series of crimes which preceded and followed the passing of Act VII of 1908 is directly traceable to these influences, to which the authors of the outrages—young men of the educated middle class—are peculiarly susceptible."

" This propaganda has been carried on not only by means of newspapers but by leaflets, pamphlets and the like, rendering it necessary to assume control over printing presses as well as newspapers." (See Statement of Objects and Reasons). **A**

(2) **Main divisions of the Bill which has been preferred with this object.**

I. Control over presses and means of publication (Ss. 3—6 and 7).

II. Control over publishers (Ss. 8—11 and 12).

III. Control over the importation into British India and the transmission by post of objectionable matter (Ss. 13—15).

IV. The suppression of seditious or objectionable newspapers, books, or other documents wherever found (S. 12).

1.—"Act No. I of 1910"—(Concluded).

I.—HOW THE FIRST OF THESE OBJECTS IS SOUGHT TO BE ATTAINED.

The first of these objects brought to attain as follows :—

(1) All proprietors of printing presses making a declaration for the first time under S. 4 of the Press and Registration of Books Act, 1867, will be required to give security which may however be dispensed with by the Magistrate at his discretion. The proprietors of existing Presses will be required to give security only if and when they are guilty of printing objectionable matter of the description to which the Act applies. (See Statement of Objects and Reasons).

(2) Local Governments may declare such security forfeited where it appears to them that the press had been used for printing or publishing objectionable matter. The Bill defines such matter as that calculated :

(*a*) to incite to murder, to anarchical outrage by means of explosions, or to acts of violence.

(*b*) to tamper with the loyalty of the Army or Navy.

(*c*) to excite racial, class or religious animosities, or hatred or contempt of the Government of British India or of any Native State or Prince.

(*d*) to incite to criminal intimidation.

(*e*) to incite to interference with the administration of the law or with the maintenance of law and order.

(*f*) to intimidate public servants by threat or injury to them or to those in whom they are interested. **B**

II.—Control over publishers of newspapers, the second main object of the Bill is provided for in a similar manner. The keeping of a printing, press and the publishing of a newspaper without depositing security when required are punishable with the penalties prescribed for failure to make the declarations required by Ss. 4 and 5 of the Press and Registration of Books Act, 1867. **C**

III.—The more efficient control over the importation and transmission by post of objectionable matter of the kind described in the Bill is given by empowering the Customs and Post Office authorities to detain and examine packages suspected of containing such matter, and to submit them for the orders of the Local Government. The Bill further prohibits the transmissions by post of any newspaper in respect of which a declaration has not been made under the Press and Registration of Books Act, 1867, and security deposited as required under the Bill, and empowers postal officials to open and deliver to the proper authorities articles in the course of transmission which are suspended of containing such newspapers. **D**

IV.—The fourth object of the Bill is attained by authorising the Local Government to declare to be forfeited any newspaper, book or other document which appears to it to contain matter of the prohibited description, and upon such a declaration the Bill empowers the police to seize such articles and to search for the same. **E**

Short title and extent.

1. (1) This Act may be called the Indian Press Act, 1910.

(2) It extends to the whole of British India inclusive of British Baluchistan, the Santhal Parganas and the Pargana of Spiti,

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "book" includes every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed or lithograped :

(*b*) "document" includes also any painting, drawing or photograph or other visible representation :

(*c*) "High Court" [1] means the highest Civil Court of Appeal for any local area except in the case of the provinces of Ajmer-Merwara and Coorg where it means the High Court of Judicature for the North-Western Provinces and the High Court of Judicature at Madras respectively:

(*d*) "Magistrate" means a District Magistrate or Chief Presidency Magistrate :

(*e*) "newspaper" [2] means any periodical work containing public news or comments on public news: and

(*f*) "printing-press" includes all engines, machinery, types lithographic stones, implements, utensils, andother plant or materials used for the purpose of printing.

(Notes).

1.—"High Court."

Reason for the insertion of the present definition.

This definition has been specially inserted, as the defintion in S. 3 (24) of the General Clauses Act. 1897. is not suitable for the Provinces of Coorg and Ajmere-Merwara where the Chief Commissioner, who is the Local Government is also the High Court. (See the Report of the Select Committee.) **F**

2.—"Newspaper."

Newspaper—Meaning.

(*a*) "The definition of newspaper herein given involves two elements, one of time of publication, the other of subject matter ; in other words, the term "Newspaper as defined here, involves the idea of periodicity, as also the fact that what is contained in the paper is public news or comment thereon." 7 Ind. Cas. 641=12 C.L.J. 294.

(*b*) "The definition ought to be read as a whole and in order to determine the true character of a publication and to enable us to answer whether it is a newspaper within the meaning of this Act, or not, we must ascertain whether the work is periodically published and contained public news or comments thereon." (*Ibid.*)

2.—"Newspaper"—(Concluded).

(*c*) "It is not enough to take a single number, and to pick out an isolated sentence or paragraph therein which may, by stretch of language is interpreted to contain public news or comments thereon." (*Ibid.*)

(*d*) "In some cases, the character of a paper may be so manifest as to make it incontestable that it periodically publishes public news or comments thereon, and is consequently a newspaper within the meaning of this Act." (*Ibid.*)

(*e*) "When it is disputed that a particular publication is not a newspaper, the prosecution ought to establish its alleged character by proof of the contents of more than one issue of the paper. The mere fact that in one particular issue an isolated sentence or paragraph may be found which may be interpreted to contain public news or comments thereon, does not make the publication a newspaper." (*Ibid.*) G

XXV of 1867. Deposit of security by keepers of printing-presses [1]

3. (1) Every person keeping a printing-press who is required to make a declaration under section 4 of the Press and Registration of Books Act, 1867, shall, at the time of making the same, deposit with the Magistrate before whom the declaration is made security to such an amount, not being less than five hundred or more than two thousand rupees, as the Magistrate may in each case think fit to require, in money or the equivalent thereof in securities of the Government of India :

Provided that the Magistrate may, if he thinks fit, for special reasons to be recorded by him, dispense with the deposit of any security or may from time to time cancel or vary any order under this sub-section.

(2) Whenever it appears to the Local Government that any printing-press kept in any place in the territories under its administration, in respect of which a declaration was made prior to the commencement of this Act under section 4 of the Press and Registration of Books Act, 1867, is used for any of the purposes described in section 4, sub-section (1), the Local Government may, by notice in writing, require the keeper of such press to deposit with the Magistrate within whose jurisdiction the press is situated security to such an amount, not being less than five hundred or more than five thousand rupees, as the Local Government may think fit to require in money or the equivalent thereof in securities, of the Government of India.

XXV of 1867.

(Notes).

1.—"Deposit of security by keepers of printing presses."

(1) **Proprietors of printing-presses making a declaration for the first time.**

All—under S. 4 of the Press and Registration of Books Act, 1867, will be required to give security which may however, be dispensed with by the Magistrate at his discretion. (See Statement of Objects and Reasons.) H

(2) **Proprietors of existing presses, when required to give security.**

The proprietors of existing presses will be required to give security only if and when they are guilty of printing objectionable matters of the description to which the Act applies. *(Ibid.)* I

Power to declare security forfeited in certain cases.

4. (1) Whenever it appears to the Local Government that any printing-press in respect of which any security has been deposited as required by section 3 is used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations which are likely or may have a tendency, directly or indirectly, whether by inference, suggestion, allusion, metaphor, implication or otherwise—

(*a*) to incite to murder or to any offence under the Explosive Substances Act, 1908, or to any act of violence, or VI of 1908.

(*b*) to seduce any officer, soldier or sailor in the Army or Navy of His Majesty from his allegiance or his duty, or

(*c*) to bring into hatred or contempt His Majesty or the Government established by law in British India or the administration of justice in British India or any Native Prince or Chief under the suzerainty of His Majesty, or any class or section of His Majesty's subjects in British India, or to excite disaffection towards His Majesty or the said Government or any such Prince or Chief, or

(*d*) to put any person in fear or to cause annoyance to him and thereby induce him to deliver to any person any property or valuable security, or to do any act which he is not legally bound to do, or to omit to do any act which he is legally entitled to do, or

(*e*) to encourage or incite any person to interfere with the administration of the law or with the maintenance of law and order, or

(*f*) to convey any threat of injury to a public servant, or to any person in whom that public servant is believed to

be interested with a view to inducing that public servant to do any act or to forbear or delay to do any act connected with the exercise of his public functions,

the Local Government may, by notice in writing to the keeper of such printing-press, stating or describing the words, signs or visible representations which in its opinion are of the nature described above, declare the security deposited in respect of such press and all copies of such newspaper, book or other document, wherever found to be forfeited to His Majesty.

Explanation I.—In clause (*c*) the expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation II.—Comments expressing disapproval of the measures of the Government or of any such Native Prince or Chief as aforesaid with a view to obtain their alteration by lawful means, or of the administrative or other action of the Government or of any such Native Prince or Chief or the administration of justice in British India without exciting or attempting to excite hatred, contempt or disaffection do not come within the scope of clause (*c*).

(2) After the expiry of ten days from the date of the issue of a notice under sub-section (1), the declaration made in respect of such press under section 4 of the Press and Registration of Books Act, 1867, shall be deemed to be annulled.

XXV of 1867.

Deposit of further security.

5. Where the security given in respect of any press has been declared forfeited under section 4, every person making a fresh declaration in respect of such press under section 4 of the Press and Registration of Books Act, 1867, shall deposit with the Magistrate before whom such declaration is made security to such amount, not being less than one thousand or more than ten thousand rupees, as the Magistrate may think fit to require, in money or the equivalent thereof in securities of the Government of India.

Power to declare further security, printing-press and publications forfeited.

6. If after such further security has been deposited the printing-press is again used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations which in the opinion of the Local Government are of the nature described in section 4, sub-section (1), the Local Government may, by notice in writing to the keeper of such

printing-press, stating or describing such words, signs or visible representations, declare—

(a) the further security so deposited,

(b) the printing-press used for the purpose of printing or publishing such newspaper, book or other document or found in or upon the premises where such newspaper, book or other document is, or at the time of printing the matter complained of was, printed, and

(c) all copies of such newspaper, book or other document wherever found, to be forfeited to His Majesty.

Issue of search-warrant.

7. (1) Where any printing-press is or any copies of any newspaper, book or other document are declared forfeited to His Majesty under this Act, the Local Government may direct any Magistrate to issue a warrant empowering any Police officer, not below the rank of a Sub-Inspector, to seize and detain any property ordered to be forfeited and to enter upon and search for such property in any premises—

(i) where any such property may be or may be reasonably suspected to be, or

(ii) where any copy of such newspaper, book or other document is kept for sale, distribution, publication or public exhibition or reasonably suspected to be so kept.

(2) Every warrant issued under this section shall, so far as relates to a search, be executed in manner provided for the execution of search-warrants under the Code of Criminal Procedure, 1898. V of 1898.

Deposit of security by publisher of newspaper.

8. (1) Every publisher of a newspaper who is required to make a declaration under section 5 of the Press and Registration of Books Act, 1867, shall, at XXV of 1867. the time of making the same, deposit with the Magistrate before whom the declaration is made security to such an amount, not being less than five hundred or more than two thousand rupees, as the Magistrate may in each case think fit to require, in money or the equivalent thereof in securities of the Government of India:

Provided that if the person registered under the said Act as printer of the newspaper is also registered as the keeper of the press where the newspaper is printed, the publisher shall not be required to deposit security so long as such registration is in force:

Provided further that the Magistrate may, if he thinks fit, for special reasons to be recorded by him, dispense with the deposit of any security or may from time to time cancel or vary any order under this sub-section.

(2) Whenever it appears to the Local Government that any newspaper published within its territories, in respect of which a declaration was made by the publisher thereof prior to the commencement of this Act under section 5 of the Press and Registration of Books Act, 1867, contains any words, signs or visible representations of the nature described in section 4, sub-section (1), the Local Government may, by notice in writing, require the publisher to deposit with the Magistrate, within whose jurisdiction the newspaper is published, security to such an amount, not being less than five hundred or more than five thousand rupees, as the Local Government may think fit to require, in money or the equivalent thereof in securities of the Government of India.

XXV of 1867.

Power to declare security forfeited in certain cases.

9 (1) If any newspaper in respect of which any security has been deposited as required by section 8 contains any words, signs or visible representations which in the opinion of the Local Government are of the nature described in section 4, sub-section (1), the Local Government may, by notice in writing to the publisher of such newspaper, stating or describing such words, signs or visible representations, declare such security and all copies of such newspaper, wherever found, to be forfeited to His Majesty.

(2) After the expiry of ten days from the date of the issue of a notice under sub-section (1), the declaration made by the publisher of such newspaper under section 5 of the Press and Registration of Books Act, 1867, shall be deemed to be annulled.

XXV of 1867.

Deposit of further security.

10. Where the security given in respect of any newspaper is declared forfeited, any person making a fresh declaration under section 5 of the Press and Registration of Books Act, 1867, as publisher of such newspaper, or any other newspaper which is the same in substance as the said newspaper, shall deposit with the Magistrate before whom the declaration is made security to such amount, not being less than one thousand or more than ten thousand rupees, as the Magistrate may think fit to require, in money or the equivalent thereof in securities of the Government of India.

XXV of 1867.

Power to declare further security and newspapers forfeited.

11. If after such further security has been deposited the newspaper again contains any words, signs or visible representations which in the opinion of the Local Government are of the nature described in section 4, sub-section (1), the Local Government may, by notice in writing to the publisher of such newspaper, stating or described such words, signs or visible representations, declare—

(*a*) the further security so deposited, and

(*b*) all copies of such newspaper wherever found,

to be forfeited to His Majesty.

Power to declare certain publications forfeited and to issue search-warrants for same 1.

12. (1) Where any newspaper, book or other document wherever printed appears to the Local Government to contain any words, signs or visible representations of the nature described in section 4, sub-section (1) the Local Government may, by notification in local official Gazette, stating the grounds of its opinion, declare such newspaper, book or other document to be forfeited to His Majesty, and thereupon any Police officer may seize the same wherever found, and any Magistrate may by warrant authorise any Police officer not below the rank of Sub-Inspector to enter upon and search for the same in any premises where the newspaper, book or other document may be or may be reasonably suspected to be.

(2) Every warrant issued under this section shall, so far as relates to a search, be executed in manner provided for the execution of search-warrants under the Code of Criminal Procedure, 1898. V of 1898.

(Notes).

1.—"Power to declare....for same."

(Punjab).

Publications to be forfeited to His Majesty.

Whereas the Local Government of the Punjab has received reliable information that the publications named below have a tendency to bring into hatred and contempt His Majesty and the Government established by law in British India and to excite disaffection towards His Majesty and the said Government, and whereas the said Local Government is of opinion that immediate action should be taken with respect to the said publications under the Indian Press Act, 1910 (I of 1910), in order that they may be prevented from disseminating matter, the publication of which is punishable under S. 124-A of the Indian Penal Code, the said Local Government acting under the powers vested in it by S. 12 (1) of the said act hereby declares the said publications to be forfeited to His Majesty.

1.—"Power to declare....for same"—(*Concluded*).

1. The Gælic American (a newspaper).
2. The Indian Sociologist (a newspaper).
3. The Indian War of Independence, 1857, a book by V. D. Savarkar.
4. Justice (a newspaper).
5. Bande Mataram (a newspaper published in Geneva).
6. The Talwar or Shamsher (a newspaper).
7. The "Satsang" (a pamphlet published in Goa).
8. A Magazine entitled "Svaraj."
9. The Circular of Freedom (a newspaper).
10. The Free Hindustan (a newspaper).
11. The Khalasa (or Khalsa) series of pamphlets.
12. A single sheet lithographed leaflet in the Bengali language and character signed "Jugantar."
13. All publications purporting to be published or issued by "The Free Hindustan" publication committee.
14. "Choose Oh, Indian Princes" (a pamphlet).

See Punjab Government Orders, No. 307, Judicial, dated the 17th March 1910.

Whereas, upon information received, the pamphlet *Ca Ira*, by Edward Holton James, appears to the Government of the Punjab to contain words, signs or visible representations of the nature described in S. 4, sub-section (1) of Act I of 1910 (the Indian Press Act, 1910);

Now, therefore, in exercise of the powers conferred by S. 12 of the said Act, His Honour the Lieutenant-Governor of the Punjab is pleased to declare that the said pamphlet, *Ca Ira*, wherever found, is hereby forfeited to His Majesty. See Punjab Government Orders, No. 218, Judicial, dated the 25th February 1910. J

Power to detain packages containing certain publications when imported into British India.

13. The Chief Customs officer or other officer authorized by the Local Government in this behalf may detain any package brought, whether by land or sea, into British India which he suspects to contain any newspapers, books or other documents of the nature described in section 4, sub-section (1), and shall forthwith forward copies of any newspapers, books or other documents found therein to such officer as the Local Government may appoint in this behalf to be disposed of in such manner as the Local Government may direct.

Prohibition of transmission by post of certain newspapers.

XXV of 1867.

14. No newspaper printed and published in British India shall be transmitted by post unless the printer and publisher have made a declaration under section 5 of the Press and Registration of Books Act, 1867, and the publisher has deposited security when so required under this Act.

Power to detain articles being transmitted by post [1].

15. Any officer in charge of a post-office or authorised by the Post-Master General in this behalf may detain any article other than a letter or parcel in course of transmission by post, which he suspects to contain—

(*a*) any newspaper, book or other document containing words, signs or visible representations of the nature described in section 4, sub-section (1), or

(*b*) any newspaper in respect of which the declaration required by section 5 of the Press and Registration of Books Act, 1867, has not been made, or the security required by this Act has not been deposited by the publisher thereof, XXV of 1867.

and shall deliver all such articles to such officer as the Local Government may appoint in this behalf to be disposed of in such manner as the Local Government may direct.

(Notes).

1.—"Power to detain articles being transmitted by post."

Section modified--Reason.

This clause as introduced proposed to empower postal officers to open any article in course of transit by post. We do not consider it necessary that postal officers should have this power. Nor do we think that they should have power to detain letters or parcels. We have therefore modified this clause by providing that such officers should have power only to detain articles other than letters, or parcels and deliver them to such officers as the Local Government may appoint in this behalf to be disposed of in such manner as the Local Government may direct." (See Report of the Select Committee.) **K**

(Punjab).

Articles detained in course of transmission by post to be delivered to whom.

In exercise of the powers conferred by S. 15 of Act I of 1910 (The Indian Press Act, 1910), His Honour the Lieutenant-Governor of the Punjab is pleased to direct that all articles detained in course of transmission by post under the provisions of the said section shall be delivered to the Deputy Inspector-General of Police, Criminal Investigation Department, Punjab. See Punjab Government Orders, No. 372, General, dated the 8th March 1910. **L**

Copies of newspapers printed in British India to be delivered gratis to Government [1].

16. (1) The printer of every newspaper in British India shall deliver at such place and to such officer as the Local Government may, by notification in the local official Gazette, direct, and free of expense to the Government, two copies of each issue of such newspaper as soon as it is published.

(2) If any printer of any such newspaper neglects to deliver copies of the same in compliance with sub-section (1), he shall, on the complaint of the officer to whom the copies should have been delivered or of any person authorised by that officer in this behalf, be punishable on conviction by a Magistrate having jurisdiction in the place where the newspaper was printed with fine which may extend to fifty rupees for every default.

(Note).

1.– "Copies.... Government."

Punjab.

In exercise of the powers conferred by S. 16 of the Indian Press Act, 1910, His Honour the Lieutenant-Governor of the Punjab is pleased to direct that the printers of every newspaper in the Punjab shall deliver two copies of each issue of such newspaper, as soon as it is published and free of expense, to the Assistant to the Deputy Inspector-General of Police, Criminal Investigation Department, Punjab, at his office in Lahore. See Punjab Government Orders, No. 373, General, dated the 8th March 1910. **M**

Application to High Court to set aside order of forfeiture.

17. Any person having an interest in any property in respect of which an order of forfeiture has been made under sections 4, 6, 9, 11 or 12 may, within two months from the date of such order, apply to the High Court to set aside such order on the ground that the newspaper, book or other document in respect of which the order was made did not contain any words, signs or visible representations of the nature described in section 4, sub-section (1).

Hearing by Special Bench.

18. Every such application shall be heard and determind by a Special Bench of the High Court composed of three Judges, or, where the High Court consists of less than three Judges, of all the Judges.

Order of Special Bench setting aside forfeiture.

19. (1) If it appears to the Special Bench that the words, signs or visible representations contained in the newspaper, book or other document in respect of which the order in question was made were not of the nature described in section 4, sub-section (1), the Special Bench shall set aside the order of forfeiture.

(2) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority (if any) of those Judges.

(3) Where there is no such majority which concurs in setting aside the order in question, such order shall stand.

Evidence to prove nature or tendency of newspapers.

20. On the hearing of any such application with reference to any newspaper, any copy of such newspaper published after the commencement of this Act may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper which are alleged to be of the nature described in section 4, sub-section (1).

Procedure in High Court.

21. Every High Court shall, as soon as conveniently may be, frame rules [1] to regulate the procedure in the case of such applications, the amount of the costs thereof and the execution of orders passed thereon, and, until such rules are framed, the practice of such Court in proceedings other than suits and appeals shall apply, so far as may be practicable, to such applications.

(Notes).

1.—"Every High Court....rules."

Rules of the Calcutta High Court.

1. These rules may be cited as "The rules under the Indian Press Act, 1910." They shall come into operation on the 18th day of March 1910, and shall apply to all applications made, and all proceedings taken in, the High Court of Judicature at Fort William in Bengal under the Indian Press Act, 1910, hereinafter referred to as "The Act."

2. Every application to the High Court, under S 17 of the Act, to set aside an order of forfeiture under Ss. 4, 6, 9, 11 or 12, shall be signed by the presentation of a petition which shall be signed by the applicant and verified at foot by the affidavit of the applicant.

3. The petition shall be written in the English language on foolscap paper, or other paper similar to it in size and quality, bookwise, and divided into paragraphs numbered consequently. Dates and sums occurring in the petition shall be expressed in figures.

4. The petition shall be headed—"In the High Court of Judicature at Fort William in Bengal, original jurisdiction in its Special Bench constituted under Act I of 1910" and shall be instituted "In the matter of the (name if any) printing-press or the (name or description) book, document or newspaper, as the case may be."

5. The petition shall state what the interest of the applicant is in the property in respect of which the order of forfeiture had been made and all documents or copies thereof in proof of such interest together with a copy of the notice of forfeiture under Ss. 4, 6, 9, 11, or 12 of the Act, as the case may be shall be annexed as exhibits to the petition.

6. The petition shall state the ground or grounds on which it is sought to set aside in order of forfeiture.

I.—"Every High Court....rules"—(Concluded).

7. All vernacular documents annexed as exhibits to the petition and all vernacular documents relied on by the applicant and intended to be tendered in evidence shall be translated into English by a competent and duly qualified translator or translators so that no question may arise as to the accuracy of the translation or the admissibility in evidence of the documents and the translations annexed to them by reason of defects in such translations.

8. The petition with exhibits annexed thereto and their translations, if any, together with a copy of such petition and exhibits with translations, shall be presented to the Chief Justice who will constitute a Special Bench and appoint a day for the hearing and determination of the application.

9. Notice in writing of the day appointed for the hearing and determination of the application shall be given by the Registrar, Original Jurisdiction to the Chief Secretary to the Government of Bengal and the copy of the petition and exhibits with translations, if any, in the last preceding rule mentioned, shall accompany such notice.

10. Printed paper-books containing the petition and all exhibits annexed thereto with translations shall be prepared in the manner prescribed by the rules for the preparation of paper-books in appeals from the High Court, Original Jurisdiction and shall be delivered to the Registrar, Original Jurisdiction, by the applicant at least one week before the day fixed for the hearing and determination of the application.

10-*a*. There shall be ordinarily printed thirty copies of the paper-book, but the Registrar may, when necessary, direct a larger number to be printed.

11. The table of fees now in force in this Court in its Original Civil Jurisdiction shall be applicable under the Act and proceedings thereon, and costs payable in respect of such application and proceedings shall be taxed, when so directed by the taxing officer of this Court in its Original Jurisdiction.

12. The provisions of the Code of Civil Procedure and the Rules and Orders of this Court relating to the execution of decrees and orders shall be applicable to the execution of orders passed by the High Court on application under the Act. **N**

Jurisdiction barred.

22. Every declaration of forfeiture purporting to be made under this Act shall, as against all persons, be conclusive evidence that the forfeiture therein referred to has taken place, and no proceeding purporting to be taken under this Act shall be called in question by any Court, except the High Court, on such application as aforesaid, and no civil or criminal proceeding, except as provided by this Act, shall be instituted against any person for anything done or in good faith intended to be done under this Act.

Penalty for keeping press or publishing newspaper without making deposit.

23. (1) Whoever keeps in his possession a press for the printing of books or papers without making a deposit under section 3 or section 5, when required so to do, shall on conviction by a Magistrate be liable to the penalty to which he would be liable if he had failed to make the declaration prescribed by section 4 of the Press and Registration of Books Act, 1867. XXV of 1867.

(2) Whoever publishes any newspaper without making a deposit under section 8 or section 10, when required so to do, or publishes such newspaper knowing that such security has not been deposited, shall, on conviction by a Magistrate, be liable to the penalty to which he would be liable if he had failed to make the declaration prescribed by section 5 of the Press and Registration of Books Act, 1867.

Return of deposited security in certain cases.

24. Where any person has deposited any security under this Act and ceases to keep the press in respect of which such security was deposited, or, being a publisher, makes a declaration under section 8 of the Press and Registration of Books Act, 1867, he may apply to the Magistrate within whose jurisdiction such press is situate for the return of the said security; and thereupon such security shall, upon proof to the satisfaction of the Magistrate and subject to the provisions hereinbefore contained, be returned to such person.

Service of notices.

25. Every notice under this Act shall be sent to a Magistrate, who shall cause it to be served in the manner provided for the service of summonses under the Code of Criminal Procedure, 1898. V of 1898.

Operation of other laws not barred.

26 Nothing herein contained shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act.

THE INDIAN PRESS ACT, 1910.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this volume and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.— S in Brevier denotes the section.

A

Act, Object and scope of the Indian Press, *A*, **3**.

Main division of the, which has been preferred with this object, *B—E*, **3**, **4**.

Application, to High Court to set aside order of forfeiture, S. 17, **14**.

Hearing by special Bench, S. 18, **14**.

Articles, Power to detain, being transmitted by post, S. 15, **13**.

detained in course of transmission by post to be delivered to whom, *L*, **13**.

B

Book, Definition of the term, S. 2, **5**.

C

Calcutta High Court, Rules of the, to regulate procedure in the case of applications to set aside order of forfeiture, *N*, **15**, **16**.

Crim. Pro. Code, 1898, Search-warrant issued under S. 7 of this Act to be executed in manner provided for search-warrants under S. 7, **9**.

D

Definition, of "book," S. 2, **5**.

——————Document, S. 2, **5**.

——————High Court, S. 2, **5**.

——————Magistrate, S. 2, **5**.

——————Newspaper, S. 2, **5**.

——————Printing Press, S. 2, **5**.

Deposit, of security by keepers of Printing-presses, S. 3, **6**, **7**.

of security, by publisher of Newspaper, S. 8, **9**, **10**.

When, of further security necessary, S. 10, **10**.

Penalty for keeping press or publishing newspaper, without making, S. 23, **17**.

Detention, Power to detain articles being transmitted by post, S. 15, **13**—S. 15 modified—Reason, *K*, **13**.

Disaffection, Term, explained, S. 4, **8**.

Document, Definition of the term, S. 2, **5**.

E

Evidence, to prove nature or tendency of newspapers, S. 20, **15**.

F

Forfeiture, Power to declare security forfeited in certain cases, S. 4, **7**, **8**.

Power of Local Government to declare newspapers forfeited, S. 11, **11**.

Power of Local Government to declare certain publication forfeited, S. 12, **10**, **12**.

Publications to be forfeited to his Majesty, *J*, **11**, **12**.

Application to High Court to set aside order of, S. 17, **14**.

Application to set aside order of—Hearing by special Bench of High Court, S. 18, **14**.

Order of special Bench setting aside, S. 19, **14**.

Declaration of—When jurisdiction barred, S. 22, **16**,

G

Government, Copies of newspapers printed in British India to be delivered gratis to, S. 16, **13**.

H

High Court, Definition of the term, S. 2, **5**.

Reason for the insertion of the present definition, *F*, **5**.

Application to, to set aside order of forfeiture, S. 17, **14**.

Applications to set aside order of forfeiture—Procedure in, S. 21, **15**.

Rules of the Calcutta, *N*, **14**, **15**.

J

Jurisdiction, Declaration of forfeiture—When jurisdiction barred, S. 22, **16**.

L

Local Government, Power to declare security forfeited in certain cases, S. 4, **7**, **8**.

When may, direct issue of search-warrant empowering Police-officer to seize and detain any property ordered to be forfeited, S. 7, **9**.

Power to declare security forfeited in certain cases, S. 9, **10**.

Powers of, to declare further security and newspapers forfeited, S. 11, **11**.

Power to declare certain publications forfeited and to issue search-warrants for same, S. 12, **12**.

Power to detain packages containing certain publications when imported into British India, S. 13, **12**.

M

Magistrate, Definition of the term, S. 2, **5**.

N

Newspaper, Definition of the term, S. 2, **5**.

Meaning, *G*, **5**, **6**.

Deposit of security by publisher of, S. 8, **9**, **10**.

Prohibition of transmission by post of certain, S. 14, **12**.

Copies of, printed in British to be delivered gratis to Government, S. 16, **13**, **14**.

Evidence to prove nature or tendency of, S. 20, **15**.

Penalty for keeping press or publishing without making deposit, S. 23, **17**.

Notices, Service of, under this Act, how effected, S. 25, **17**.

O

Offence, against this Act—operation of other laws not barred, S. 26, **17.**
Other laws, operation of, not barrred, S. 26, **17.**

P

Penalty, for keeping press or publishing newspaper without making deposit, S. 23, **17.**
Post, Power to detain articles being transmitted by, S. 15, **13.**
Prohibition of transmission by, of certain newspapers, S. 14, **12.**
Articles detained in course of transmission by, to be delivered to whom, *L*, **13.**
Press, Penalty for keeping, or publishing newspaper without making deposit, S. 23, **17.**
Printing Press, Definition of the term S. 2, **5.**
Deposit of security by keepers of, S. 3, **6**, **7.**
Proprietors of, making a declaration for the first time, *H*, **7.**
Proprietors of existing,—when required to give security, *I*, **7.**
Power to declare security furnished by, forfeited in certain cases, S. 4, **7**, **8.**
When may Local Government direct Magistrate to issue search warrant empowering police office, to seize and detain property ordered to be forfeited, S. 7, **9.**
Procedure, Applications to set aside order of forfeiture—Procedure in High Court, S. 21, **15.**
Prohibition, of transmission by post of certain newspapers, S. 14, **12.**
Publisher, Deposit of security by, of, newspaper, S. 8, **9**, **10.**

S

Search-warrant, issued under S. 7 of the Act, how executed, S. 7, **9.**
Power to declare certain publications forfeited and to issue, for same, S. 12, **11**, **12.**
Security, Deposit of, by keepers of printing presses, S. 3, **6**, **7.**
Proprietors of printing presses making declaration for the first time, *H*, **7.**
Proprietors of existing printing presses when required to give, *I*, **7.**
Power to declare, forfeited in certain cases, S. 4, **7**, **8.**
Deposit of, by publishers of Newspaper, S. 8, **9**, **10.**
Power to declare, forfeited in certain cases, S. 9, **10.**
When deposit of further, necessary, S. 10, **10.**
Power to declare further, and newspapers forfeited, S. 11, **11.**
Return of deposited, in certain cases, S. 24, **17.**
Special Bench, Application to set aside order of forfeiture—Hearing by, of High Court, S. 18, **14.**
Order of, of High Court setting aside forfeiture, S. 19, **14.**

THE LAWYER'S COMPANION SERIES.

THE NEWSPAPERS (INCITEMENTS TO OFFENCES) ACT, 1908

(ACT VII OF 1908)

(WITH THE CASE-LAW THEREON)

COMPILED AT

THE "LAWYER'S COMPANION" OFFICE, TRICHINOPOLY

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THE NEWSPAPERS (INCITEMENTS TO OFFENCES) ACT, 1908.

TABLE OF CASES NOTED IN THIS VOLUME.

		PAGE
	I.L.R. Calcutta Series.	
34 C 986	Abinash Chandra Bhattacharjee v. Emperor	5
36 C 405 (414)	Girija Sundar Chuckerbutty v. Emperor	7, 8
	Bombay Law Reporter.	
12 Bom L R 120	*In Re*, Dhondo Kashinath Phadke	9
	Calcutta Law Journal.	
9 C L J 143	Girija Sundar Chakravarti v. The King-Emperor	7
12 C L J 294	Sarat Chandra Mitter v. King-Emperor	5, 7
	Calcutta Weekly Notes.	
13 C W N 672	Grija Sundar Chuckerbutty v. King-Emperor	7
	Madras Law Journal.	
19 M L J J 246	————————————	8
	Nagpore Law Reports.	
5 N L R 59	Prithwigir v. Emperor	5
	Punjab Weekly Reporter.	
37 P W R (Cr) 1907	Pindi Das v. King-Emperor	5
	Criminal Law Journal.	
6 Cr L J 411	Pindi Das v. Emperor	5
9 Cr L J 539	Prithwigir v. Emperor	5
9 Cr L J 545	Girija Sundar Chakravarti v. Emperor	7
	Indian Cases.	
2 Ind Cas 285	Girija Sundar Chakravarti v. Emperor	7
7 Ind Cas 641	Sarat Chandra Mitra v. Emperor	5, 7

THE NEWSPAPERS (INCITEMENTS TO OFFENCES) ACT, 1908.

ACT NO. VII OF 1908 [1].

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 8th June, 1908.)

An Act for the prevention of incitements to murder and to other offences in newspapers.

WHEREAS it is expedient to make better provision for the prevention of incitements to murder and to other offences in newspapers; It is hereby enacted as follows:—

(Notes).

1.—"Act No. VII of 1908."

(1) **Object and scope of the Act.**

"The circumstances of the recent outrages by means of the explosive substances have disclosed a close connection between the perpetrators of such outrages and certain newspapers which have from time to time published criminal incitements. Experience has shown that prosecution under the existing law is inadequate to prevent the publications of these incitements."

"In the case of one newspaper, persons registered as printers and publishers have been within a comparatively short period prosecuted and convicted several times, while the real authors of the incitements have concealed their identity. This newspaper notwithstanding these prosecutions continues to exist and to pursue its criminal course. Nor is it a solitary instance of the kind."

"It has therefore become necessary to make better provision for the prevention of such incitements in newspapers."

"The scope of the present Bill is confined to incitements to murder, to offences under the Explosive Substances Act, 1908 and to acts of violence."

"It gives power in such cases to confiscate the Printing Press used in the production of the newspaper, and to stop the lawful issue of the newspaper."

The procedure adopted in the Bill follows the general lines of that provided in the Code of Criminal Procedure for dealing with public nuisances, with the important addition that the final order of the Magistrate directing the forfeiture of the Press is appealable to the High Court within fifteen days. It is further provided that no action can be taken against a Press save on the application of a Local Government. (*See Statement of Object and Reasons.*)

1.—"Act No. VII of 1908"—(Continued).

(2) **Explosive Substances Act and the Present Act.**

The present Act is a sequel to the Explosive Substances Act, 1908 and is intended to meet the same emergency. See *Proceedings of the Council, dated 8th June, 1908.* **A-1**

"There are two factors in this emergency, neither of which it is possible to ignore if the evil is to be adequately dealt with. The first is the actual making and using of bombs, which has been met by the Explosive Substances Act, the second is the public incitement to murder and acts of violence carried on through the medium of an infamous section of the Press. These two factors are inseparable as cause and effect." (*Ibid.*) **B**

"Government's bounden duty surely, is not only to make adequate provisions to punish the perpetrators of outrages that actually occur, but also to close the fountain head, and to ensure that colleges of anarchy, assassination, rebellion and violence are not openly maintained under the guise of newspapers circulated among the public." (*Ibid.*) **C**

(3) **Nature of present Legislature.**

"This Bill is not a general Press law directed against sedition as defined in S. 124-A of the Indian Penal Code.

"The present Bill is confined entirely to the emergency which is now facing us."

"It is intended to provide a more effective way than prosecution for attempts through newspapers to incite to murder and acts of violence."

"It is not meant as a substitute for, but as a supplement to, prosecution."

"It is directed against newspapers which persistently defy the law, which court prosecution, which set up dummies for punishment while the the real authors lie concealed and which establish themselves as schools of anarchy and outrage with the object of debauching young and immature minds, and inciting men to murder, armed revolt and secret and diabolical schemes of general assassination."

"The only way to deal with such newspapers is to put an end to their existence and this is done by means of this Bill which gives power to confiscate the printing press and to extinguish the newspaper. This is the object of this Bill and these two are all the powers that it contains." (*See Proceedings of the Council, dated 8th June, 1908*).

"This Bill is not directed against the liberty of the Press. If a repressive measure is a measure which curtails the legitimate liberties of the people, this Bill is in no sense a repressive measure. It curtails no liberty that is legitimate. It is strictly confined to incitements to murder, and acts of violence. No newspaper in the civilized world has liberty to make such incitements. It is impossible that the Bill can ever affect any newspaper that is properly and decently conducted. Even when it is applied in respect of a newspaper which has degenerated from liberty into lawless license, its application can only be by means of constitutional judicial methods in which the parties concerned will have the advantage of the complete judicial trial to which they would have been entitled if they had been prosecuted for committing an offence." (*See the Proceedings of the Council, dated 8th June, 1908.*) **D**

1.—"Act No. VII of 1908"—(Concluded).

(4) **Press not forfeitable under S. 517, Crim. Pro. Code, 1898.**

A printing press in which seditious matters have been printed cannot be confiscated under the provisions of S. 517, Crim. Pro. Code, 1898, 34 C. 986. See, also, 37 P.W.R. (Cr.), 1907 = 6 Cr. L.J. 411; 5 N.L.R. 59 = 9 Cr. L. J. 539. E

Short title and extent.

1. (1) This Act may be called the Newspapers (Incitements to offences) Act, 1908.

(2) It extends to the whole of British India.

Definitions.

2. (1) In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "Magistrate" means a District Magistrate or Chief Presidency Magistrate:

(*b*) "Newspaper [1]" means any periodical work containing public news or comments on public news:

(*c*) "Printing press" includes all engines, machinery, types, lithographic stones, implements, utensils and other plant or materials used for the purpose of printing.

(2) Save as herein otherwise provided all words and expressions in this Act shall have the same meaning as those respectively assigned to them in the Code of Criminal Procedure, 1898. V of 1898

(Notes).

1.—"Newspaper."

Newspaper—Meaning.

(*a*) The term "Newspaper" is defined in S. 2, sub-S. 1, cl. (*b*) of Act VII of 1908, to mean "any periodical work containing public news or comments on public news." 7 Ind. Cas. 641 = 12 C.L.J. 294. F

(*b*) This definition, therefore, involves two elements, one of time of publication, the other of subject matter; in other words, the term "Newspaper" as defined in the Act, involves the idea of periodicity, as also the fact that what is contained in the paper is public news or comment thereon. (*Ibid.*) G

(*c*) The definition, in my opinion, ought to be read as a whole, and in order to determine the true character of a publication and to enable us to answer whether it is a newspaper within the meaning of the Act or not, we must ascertain whether the work is periodically published and contains public news or comments thereon. (*Ibid.*) H

(*d*) It is not enough to take a single number, and to pick out an isolated sentence or paragraph therein which may, by stretch of language, be interpreted to contain public news or comments thereon. (*Ibid.*) I

(*e*) In some cases, the character of a paper may be so manifest as to make it incontestable that it periodically publishes public news or comments thereon, and is consequently a newspaper within the meaning of the Act. (*Ibid.*) J

1.—"Newspaper"—(Concluded).

(*f*) When it is disputed that a particular publication is not a newspaper, the prosecution ought to establish its alleged character by proof of the contents of more than one issue of the paper. The mere fact that in one particular issue an isolated sentence or paragraph may be found which may be interpreted to contain public news or comments thereon, does not make the publication a newspaper. (*Ibid.*) K

Power to forfeit printing presses in certain cases.

3. (1) In cases where, upon application made by order of or under authority from the Local Government, a Magistrate is of opinion that a newspaper printed and published within the Province contains any incitement [1] to murder or to any offence under the Explosive Substances Act, 1908, or to any act of violence [2], such Magistrate may make a conditional order declaring the printing press used, or intended to be used, for the purpose of printing or publishing such newspaper, or found in or upon the premises where such newspaper is, or at the time of the printing of the matter complained of was, printed and all copies of such newspaper, wherever found, to be forfeited [3] to His Majesty, and shall in such order state the material facts and call on all persons concerned to appear before him, at a time and place to be fixed by the order, to show cause why the order should not be made absolute.

VI of 1908.

(2) A copy of such order shall be fixed on some conspicuous part of the premises specified in the declaration made in respect of such newspaper under section 5 of the Press and Registration of Books Act, 1867, or of any other premises in which such newspaper is printed, and the affixing of such copy shall be deemed to be due service of the said order on all persons concerned.

XXV of 1867.

(3) In cases of emergency or in cases where the purposes of the application might be defeated by delay, the Magistrate may, on or after the making of a conditional order under sub-section (1), make a further order *ex-parte* for the attachment of the printing press or other property referred to in the conditional order.

(4) If any person concerned appears and shows cause against the conditional order, the Magistrate shall take evidence, whether in support of or in opposition to such order, in manner provided in section 356 of the Code of Criminal Procedure, 1898.

V of 1898.

(5) If the Magistrate is satisfied that the newspaper contains matter of the nature specified in sub-section (1), he shall make the

conditional order of forfeiture absolute in respect of such property as he may find to be within the terms of the said sub-section.

(6) If the Magistrate is not so satisfied, he shall set aside the conditional order of forfeiture and the order of attachment, if any.

(Notes).

1.—"Incitement."

(1) Incitement—Meaning.

(*a*) The word incitement is familiar enough and as it has not been specifically defined in this Act or in any other Act of the Indian Legislature to have a special or restricted meaning, it should be understood in its ordinary inception. *Per Ryves, J.* in 36 C. 405 (414) = 9 C.L.J. 143 = 13 C.W.N. 672 = 9 Cr.L.J. 545 = 2 Ind. Cas. 285. **L**

(*b*) The use of seditious language sufficient to bring a case under S. 124-A of the Penal Code is not equivalent to an incitement to the offences mentioned in S. 3 Sub-S. (1) of Act VII of 1908. 7 Ind. Cas. 641 = 12 C.L.J. 294. **M**

(*c*) That section confers very limited powers of forfeiture, and is applicable only to cases of presses used for the printing of newspapers which contain incitements to the particular crimes or classes or crimes specifically mentioned in that section. (*Ibid.*) **N**

(*d*) The expression "Incitement" clearly implies the idea of rousing to action, instigation and stimulation. (*Ibid.*) **O**

(*e*) And as the Act expressly states, the incitement must be to murder or to an offence under the Explosive Substances Act, or to an act of violence. (*Ibid.*) **O-1**

(*f*) If the use of the seditious language, sufficient to bring a case under S. 124-A of the Indian Penal Code, was equivalent to an incitement to the offences mentioned in S. 3, sub-s. (1) of Act VII of 1908, the Legislature might appropriately have framed the section in very different terms. (*Ibid.*) **P**

(2) "Incitement," meaning of, need not be direct—Liability of newspaper, how to construe—Printing Press, confiscation of.

Under Act VII of 1908, no question as to the criminality of any "person" arises and there need not necessarily be any "direct" incitement or any other act of violence. Nor need the incitement be addressed to any particular person or persons. 36 C. 405 = 9 C.L.J. 143 = 13 C. W.N. 672 = 9 Cr. L.J. 545 = 2 Ind. Cas. 285. **Q**

The only question is, whether the newspaper contains any incitement to murder or to any offence under the Explosive Substances Act, 1908, or to any Act of violence, *i.e.*, whether the articles in question is calculated directly or indirectly to move to action, to stir up, to stimulate, to instigate, or to encourage to murder or acts of violence. The word "incitement" bears the plain dictionary meaning. (*Ibid.*) **R**

In this section the words "any incitement" include direct and indirect incitement and the meaning of the word incitement is what is given in the dictionaries, *e.g.*, to "move to action" to "stir up," to "stimulate," to "instigate" or to "encourage." (*Ibid.*) **S**

1.—"*Incitement*"—(*Concluded*).

Per Ryves, J.—There can be no hard and fast canon to decide what the words or whether a given set of words constitute an "incitement." It is really a question of fact in each case and must usually depend very largely on concomitant circumstances. The article must be read, as a whole and read, as far as possible, in the sense in which it was read by that section of the public to whom it was addressed, bearing in mind the occasion and place of its publication and the class or status of persons who are liklely to be affected by it. (*Ibid.*) **T**

Comment on 36 C. 405.

(*a*) "The question in 36 C 405 turns upon the construction of S. 3 of the Act, and the learned Judges were right in not laying down any general principles." 19 M.L.J. 246. **U**

(*b*) "An incitement within the meaning of the Act may no doubt be direct as well as indirect, but a mere approval or an expression of an approval of a particular act cannot be said to be an incitement to do similar acts, though such act may be a crime." (*Ibid.*) **V**

(*c*) "One of the learned Judges says that the interpretation of an undefined word in an Indian statute cannot be derived from its definition in any English or Foreign Statute." (*Ibid.*) **W**

(*d*) "We can hardly regard this statement as laying down a correct principle." (*Ibid.*) **X**

(*e*) "If the word is defined in an Indian Statute the English cases can be no guide unless the word is defined similarly in an English Statute dealing with the same subject-matter." (*Ibid.*) **Y**

(*f*) "If the word is not defined in the Indian statute but is a familiar term of the English Law, and the English Statute uses it as such familiar term then we do not see why reference may not be had to the definition in the English Statute where the Indian Legislature has adopted the word as a familiar term." (*Ibid.*) **Z**

2.—"*Any act of violence.*"

When action can be taken under the Act—"*Any act of violence,*" necessity for the insertion of the expression.

"Action can be taken under the Bill only when a newspaper contains an incitement to murder or to *any acts of violence.*"

"It may be thought that the last words "*any act of violence*" are too wide and that they admit of action being taken on account of a trivial deviation towards censurable journalism. If these words were omitted, if no words of the kind were inserted, the Bill would in practice be inoperative, for it would be easy to write round the clause, to evade its intention, and to publish the most dangerous incitements while keeping within the letters of the law. The position is familiar in criminal law. If you consider every possible particular in which almost any penal clause may be abused, you may throw it out altogether. Take for instance the Indian Penal Code. If you give your neighbour a tap on the shoulder, you may come within the terms of the offence of using criminal force. No Bill could be drawn which would prevent extreme cases from arising. It would be impossible to draw any Bill which would stop the offences that are aimed at, if it were insisted that under no conceivable circumstances it could be applied to others than those whose punishment it provides for. If you mean to have a Bill that will effect the purpose that you have in view you must

2.—"Any act of violence"—(Concluded).

admit these consequences and rely on the safeguards which will prevent injustice from being done. Now the safeguards under this Bill are far greater than those afforded under the ordinary penal law. A private person can take no action under it. The police can take no action under it. Not even the Magistrate can imitate action. The Bill cannot be applied to extreme cases because no action will be taken except on the initiative of a responsible Local Government. It is inconceivable that a Local Government should take action in any extreme case, or in any case that did not prevent a serious aspect.

There is therefore no danger to be apprehended by the public from the wideness of the clause. *See the Proceedings of the Council, dated 8th June, 1908.* **A**

3.—"Conditional order....forfeited."

Order—Forfeiture of press.

(*a*) S. 3 of this Act provides for the making of a conditional order declaring the printing press used for the purpose of printing or publishing the offending newspaper to be forfeited. 12 Bom.L R. 120. **A-1**

(*b*) The section refers to the whole of the press and no order could be made under it limited only to such portions of the press as were employed in printing the offending newspaper. (*Ibid.*) **B**

Power to seize.

4. (1) The Magistrate may by warrant empower any Police-officer not below the rank of a Sub-Inspector to seize and detain any property ordered to be attached under section 3, sub-section (3), or to seize and carry away any property ordered to be forfeited under section 3, sub-section (5), wherever found and to enter upon and search for such property in any premises—

(*a*) where the newspaper specified in such warrant is printed or published, or

(*b*) where any such property may be or may be reasonably suspected to be, or

(*c*) where any copy of such newspaper is kept for sale, distribution, publication or public exhibition or reasonably suspected to be so kept.

(2) Every warrant issued under sub-section (1) so far as it relates to a search shall be executed in manner provided for the execution of search warrants by the Code of Criminal Procedure, 1898. V of 1898.

Appeal.

5. Any person concerned who has appeared and shown cause against a conditional order of forfeiture may appeal to the High Court within fifteen days from the date when such order is made absolute.

Bar of other proceedings.

6. Save as provided in section 5, no order duly made by a Magistrate under section 3 shall be called in question in any Court.

Power to annul declaration under Press and Registration of Books Act, 1867 [1].

7. Where an order of forfeiture has been made absolute in relation to any newspaper the Local Government may, by notification in the local official Gazette, annul any declaration made by the printer or publisher of such newspaper under the Press and Registration of Books Act, 1867, and may by such notification prohibit any further declaration being made or subscribed under the said Act in respect of the said newspaper, or of any newspaper, which is the same in substance as the said newspaper, until such prohibition be withdrawn.

XXV of 1867.

(Notes).

1.—"Power to annul....1867."

Order of forfeiture—Effect.

"When an order of forfeiture has been made by the Magistrate, but only in that case, the Local Government is empowered to annul the declaration made by the printer and publisher of the newspaper under the Press and Registration of Books Act, 1867, and thereafter neither that newspaper nor any other which is the same in substance can be published without a breach of the law." *See Statement of Objects and Reasons.* **C**

Penalty [1].

8. Any person who prints or publishes any newspaper specified in any prohibition notified under section 7 during the continuance of that prohibition shall be liable, on conviction, to the penalties prescribed by section 15 of the Press and Registration of Books Act, 1867.

(Notes).

1.—"Penalty."

Penalties prescribed.

The —— are "fine not exceeding five thousand rupees, or imprisonment for a term not exceeding two years, or both." **D**

Application of Code of Criminal Procedure.

9. All proceedings under this Act shall be conducted so far as may be in accordance with the provisions of the Code of Criminal Procedure, 1898.

V of 1898.

Operation of other laws not barred.

10. No proceedings taken under this Act shall operate to prevent any person from being prosecuted for any act which constitutes an offence under any other law.

THE NEWSPAPER (INCITEMENT TO OFFENCES) ACT, 1908.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this volume and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S in Brevier denotes the section.

A

Act, object and scope of the Newspapers (Incitements to offences), 1908, *A*, **3.**

Explosive Substances Act and the present, A_1,—*C*, **4.**

Nature of the Newspapers incitements to offences, 1908, *D*, **4.**

Act of violence, When action can be taken under the Act, *A*, **8, 9.**

Appeal, Person concerned who has appeared and shown cause against a conditional order of forfeiture may, to High Court, S. 5, **9.**

B

Bar, of other proceedings, S. 6, **10.**

C

Cr.P.C. 1898, S. 517, Press not forfeitable under, *E*, **5.**

Application of, to proceedings under this Act, S. 9, **10.**

D

Definition, of the term, "Magistrate", S. 2, **5.**

——— ———"Newspaper," S. 2, **5.**

———"Printing Press," S. 2, **5.**

E

Explosive Substances Act, and the Act VII of 1908, *A*-1, *B*, *C*, **4.**

F

Forfeiture, Power to forfeit, in certain cases, S. 3, **6.**

of press, *A*—1, *B*, **9.**

Order of—Effect, *C*, **10.**

H

High Court, Person concerned who has appeared and shown cause against a conditional order of forfeiture may appeal to, S. 5, **9.**

I

Incitement, Meaning of the term, *L*—*P*, **7.**

———need not be direct—Liability of newspaper, how to construe—Printing Press, confiscation of, *Q*—*Z*, **7, 8.**

L

Local Government, Power to annul declaration under Press and Registration of Books Act, 1867, S. 7, **10.**

M

Magistrate, Definition of the term—S. 2, **5**.

N

Newspaper, Definition of the term, S. 2, **5**.

Meaning, *F—K*, **5**, **6**.

Liability of, how to construe, *Q—Z*, **7**, **8**.

Power to seize, S. 4, **9**.

P

Penalty, Nature of, inflicted on persons printing or publishing any newspaper specified in any prohibition notified under S. 7 of this Act during the continuance of that prohibition, S. 8, **10**.

Prescribed, *D*, **10**.

Practice, Bar of other proceedings, S. 6, **10**.

Proceedings uuder the Act—Operation of other laws not barred, S. 10, **10**.

Press, Not forfeitable under S. 517, Cr.P.C. 1898, *E*, **5**.

Forfeiture of, A_1,—*B*, **9**.

Press and Registration of Books Act, 1867, Power to annul declaration under, S. 7, **10**.

Printing Press, Definition of the term, S. 2, **5**.

Power to forfeit, in certain cases, S. 3, **6**.

confiscation of, *Q—Z*, **7**, **8**.

Proceedings, under the Act—Operation of other laws not barred, S. 10, **10**.

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119—1

THE CRIMINAL LAW AMENDMENT ACT, 1908.

TABLE OF CASES NOTED IN THIS ACT.

		PAGE
	I.L.R. Calcutta Series.	
37 C 439 ..	Emperor v. Lalit Kumar Chatterjee ...	14
	Calcutta Weekly Notes.	
13 C W N 605 (F B)	Barristers and Vakils, *Re* ...	9, 15
14 C W N 512 (516)	Sourindra Mohan Chuckerbutty v. The Emperor ...	4, 10, 14
14 C W N 516 ...	Emperor v. Lalit Kumar Chatterjee ...	8, 10, 14
14 C W N cxlv ...	Sourindra Mohun Chuckerbutty v Emperor and Emperor v. Lalit Kumar Chatterjee ..	10
	Indian Cases.	
6 Ind Cas 8 ...	Sourindra Mohan Chuckerbutty v. The Emperor ...	10
6 Ind Cas 10 ...	Emperor v. Lalit Kumar Chatterjee ...	14

THE CRIMINAL LAW AMENDMENT ACT, 1908

ACT XIV OF 1908.[1]

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 11th December 1908.)

An Act to provide for the more speedy trial of certain offences and for the prohibition of associations dangerous to the public peace.

WHEREAS it is expedient to provide for the more speedy trial of certain offences, and for the prohibition of associations dangerous to the public peace; It is hereby enacted as follows :—

(Notes).

1.—"Act XIV of 1908."

(1) **Necessity for the passing of the Act—Objects at which the bill aims.**

Recent events have demonstrated that it is expedient to provide for the more speedy trial of anarchical offences, and for the suppression of associations dangerous to the public peace. This bill has been prepared to meet those objects. (See statement of objects and reasons). **A**

(2) ***Bill*, nature of.**

(*a*) "The Bill is simple in its nature and will enable Government to deal especially with all who are in any way concerned with disseminating the cult of sedition and treason." See the Proceedings of the Council. **B**

(*b*) "The measure in no sense interferes with the liberty of the people; it only aims at suppressing and eradicating the mischief attendant on protracted trials and dispenses with the unnecessary publicity which in cases of political trials in this country is proved by experience to be undesirable." (*Ibid*) **C**

(3) **Means provided by the Cr. P. Code for bringing anarchical crimes to trial—Conditions necessitating present legislation.**

"Anarchical crimes generally involve an element of conspiracy, and their prosecution is a matter of great complexity. The witnesses are numerous, each giving his quota of evidence on, it may be, only one link of the chain that connects the accused with the offence. I will assume that the police have discovered the existence of an anarchical conspiracy, and acting on a reasonable suspicions have arrested the accused. It takes a long time to unravel the web of conspiracy. This is always a tedious task in India, where the public are disinclined to come forward and give assistance to those who are investigating the offence, and it is still more a tedious task when the offence has a political aspect and the tendencies to suppress evidence and terrorize the witnesses come into play. There must be considerable delay in such cases before the offence is completely investigated and is ready for trial. Then come

1.—"Act XIV of 1908"—(Continued).

protracted proceedings in the committing Magistrate's Court, and delays while applications are being made to the High Court on all sorts of interlocutory matters. Meanwhile the Press are not only reporting the proceedings but in many cases, owing to the imperfection of the law of contempt, are commenting in leading articles on the features, in a manner which cannot but interfere prejudicially with the serenity of a trial where political issues are at stake. Next come the proceedings in the Sessions Court in which all the evidence is heard over again. And finally comes the appeal to the High Court."

"The result is that cases of a complex nature which excite strong political feeling are pending before the various Courts and are held up to public notice for an utterly disproportionate time."

"This is due to the fact that the ordinary Criminal Procedure Code of India is ill-suited to anarchical crimes."

"The machinary is framed in the interests of a simple people liable to oppression in the name of the law. The object aimed at in every turn is the laudable one of protecting the innocent. But India has changed since the lines of the Criminal Procedure Code were first drawn The simplification of procedure that is aimed at in the present legislation is not intended to affect the criminal law generally, but merely to provide for the more speedy trial of such cases of complexity as may arise from anarchical conspiracy. (See the proceedings of the Council.) D

(4) Act XIV of 1908—Necessity for its continuance in the Statute book.

(*a*) Comments on this Act in the light of judicial decisions may serve some useful purpose." See 14 C.W.N. (Notes) cliii, cliv. E

(*b*) "The only provisoin in this Act which has met with almost universal approval was the provision for the constitution of a Special Tribunal of High Court Judges to try cases committed under the provisions of the Act." (*Ibid.*) F

(*c*) "Of the other provisions, the judgment of the High Court in the *Barrah Dacoity* case showed that the apprehensions entertained with regard to the *ex parte* enquiry which takes place behind the back of the accused were far from imaginary ones (13 C.W.N. clxxxix)." G

(*d*) (i) "The case of 14 C.W.N. 512 presents another feature which reveals, perhaps, a more serious source of prejudice to the accused than any we have noticed before." (*Ibid.*) See, also, 14 C.W.N. 512. H

(ii) "The proceedings before the Magistrate being held *ex parte*, the accused (who, the High Court holds, was entitled to move that Court for bail) did not know upon what materials bail was being refused to him." (*Ibid.*) I

(iii) "Their Lordships observe in the judgment in that case:—"The Appellant's advocate has laboured under the disadvantage of not having seen the record in this case, as the Magisterial enquiry was according to S. 4 of the Act *ex parte*, and we have not thought it right to allow him access to it. He had, therefore, a right to make any suppositions as to the facts appearing on the record, asking us to verify them afterwards." J

(iv) "We fail to comprehend how an advocate can defend an accused person on mere suppositions of his own without even knowing what the prisoner is accused of and what the case for the prosecution is." (*Ibid.*) K

1.—"Act XIV of 1908"—(Concluded).

(v) The High Court held that its jurisdiction to grant bail in such cases had not been taken away, and one of the grounds on which their Lordships relied to justify this conclusion is this: "as a prominent feature of the special procedure before a Magistrate under the Act is the absence of the accused during the Magisterial enquiry, it is difficult to see how the grant of bail by proper authority can be called in question." (*Ibid.*) **L**

(vi) "These extracts from the judgment of the High Court prove, if they do nothing more, the anomalous character of the procedure that is to be observed before the Magistrate and in the High Court in respect of bail or other relief that may be prayed for during the indefinite detention of the accused in custody." (*Ibid.*) **M**

(*e*) "If the Government of India will look carefully into the judgments in this and the *Barrah Dacoity* and the other cases to which we have referred, we feel sure, they will be convinced that these provisions of the Criminal Law Amendment Act have so far served little useful purpose." (*Ibid.*) **N**

(*f*) "If the Government be not disposed to repeal the Act altogether, they should at least allow counsel for the accused an inspection of the records of the *ex parte* enquiry." **O**

(*g*) "At any rate, it is only fair that there should be some provision in the law to enable the accused and their advisers to know what the charge against them is and what are the materials that are being gathered by the prosecution to justify their detention in custody during the enquiry and to secure their ultimate conviction." (*Ibid.*) **P**

(*h*) "It goes without saying that an accused who does not know the case that is being made against him and who during the whole time that the prosecution has been busy collecting materials is kept in close custody must be seriously prejudiced and hampered in making a proper defence." (*Ibid.*) **Q**

(*i*) "We believe that the Government is at least as anxious as those who appear to defend the accused that the accused should have a fair trial." (*Ibid.*) **R**

(*j*) "The provision of S. 12 of the Criminal Law Amendment Act which says that no accused shall be released on bail if there appear to be sufficient grounds for enquiry into his guilt however stands effectually in the way of the Magistrate admitting the accused to bail pending the enquiry." (*Ibid.*) **S**

(*k*) "For, this provision can only mean that the Magistrate must either discharge the accused or detain him in custody—which practically means that the Magistrate is to detain the accused in custody on the information furnished by the Police." (*Ibid.*) **T**

(*l*) "For the protection of innocent persons who may chance to incur suspicion and also to enable even the guilty to secure a fair trial, it is essential that the Court's power to grant bail should not be subjected to arbitrary restrictions of the kind embodied in S. 12 of the Act." (*Ibid.*) **U**

Short title and extent.

1. (1) This Act may be called the Indian Criminal Law Amendment Act, 1908.

(2) It extends [1] to the Provinces of Bengal and of Eastern Bengal and Assam ; but the Governor General in Council may, at any time, by notification in the Gazette of India, extend the whole or any Part thereof to any other Province.

(3) When extending Part I to any Province under sub-section (2) the Governor General in Council may declare the operation of the provisions of that Part relating to the constitution of the Special Bench to be subject to such modifications as may in the opinion of the Governor General in Council be necessary to adapt those provisions to the circumstances of that Province.

(Note).

1.—" Extends."

Act extended to various parts.

In exercise of the powers conferred by S. 1. Sub-S. 2 of the Criminal Law Amendment Act, XIV of 1908, the Governor General in Council is pleased to extend the whole of the said Act to :—The Presidency of Madras, The United Provinces of Agra and Oudh, The Province of the Punjab, The Central Provinces. See Home Department Notification Pol. No. 65, dated 13th Jan. 1910. **V**

PART I. [1]

SPECIAL PROCEDURE.

Application of Part.

2. (1) Where a Magistrate has taken cognizance of any offence specified in the Schedule, and it appears to the Governor General in Council or to the Local Government that in the interests of peace and good order the provisions of this Part should be made to apply to proceedings in respect of such offence, the Governor General in Council, or the Local Government, with the previous sanction of the Governor General in Council, may make an order in writing to that effect, and may by such order direct that the provisions of this Part shall apply to such proceedings.

(2) No order shall be made under sub-section (1) in any case in which an order of commitment to the High Court or Court of Session has been made under the Code of Criminal Procedure, 1898 ; but, save as aforesaid, an order may be made in respect of any offence whether committed before or after the commencement of this Act, or, in the case of a Province to which this Part is extended under section 1, before or after such extension.

V of 1898.

(Note).

I.—" Part I."

Scope of Part I.

Part I provides for the trial of certain offences by a Bench of three Judges of the High Court. In the procedure, there is no formal commitment, but the case is prepared for trial by an *ex parte* inquiry before a Magistrate, and the trial is without Jury. Two special circumstances are made applicable to cases to which the Bill will apply. The first is that bail shall be refused so long as there is reasonable grounds for further inquiry into the guilt of the accused. The second is that the evidence of witnesses who have been examined by the Magistrate may be admitted at the trial if the witness is dead or cannot be produced, and the High Court has reason to believe that his death or absence was caused in the interests of the accused. (See statement of objects and Reasons). **W**

Inquiry by Magistrate.

3. (1) On receipt of an order under section 2 the Magistrate who has taken cognizance of the offence, or any other Magistrate to whom the case has been transferred, shall proceed to enquire whether the evidence offered upon the part of the prosecution is sufficient to put the accused upon his trial for an offence specified in the Schedule, and shall for that purpose record on oath the evidence of all such persons as may be produced in support of the prosecution, and may record any statement of the accused if voluntarily tendered by him.

(2) Where before the commencement of proceedings under this Act the evidence of a witness has been recorded under the Code of Criminal Procedure, 1898, in the course of an inquiry into the same offence as that to which such proceedings relate, such evidence may be treated for the purposes of this Act as if it had been taken under sub-section (1). V of 1898.

Inquiry to be *ex parte*.

4. The accused shall not be present during an inquiry under section 3, sub-section (1), unless the Magistrate so directs, nor shall he be represented by a pleader during any such inquiry, nor shall any person have any right of access to the Court of the Magistrate while he is holding such inquiry.

When accused person to be discharged.

5. When the evidence referred to in section 3 has been taken, the Magistrate shall, if he finds that it is not sufficient to put the accused upon his trial for an offence specified in the Schedule, record his reasons and discharge the accused, unless it appears to the Magistrate that the accused should be tried or committed for trial under

the provisions of the Code of Criminal Procedure, 1898, for any other offence, in which case the Magistrate shall proceed accordingly.

Power to send accused for trial.

6. When upon such evidence being taken the Magistrate is satisfied that it is sufficient to put the accused upon his trial for an offence specified in the Schedule, he shall—

(*a*) frame a charge under his hand declaring with what offence the accused is charged,

(*b*) make an order directing that the accused be sent to the High Court for trial, and

(*c*) cause the accused to be supplied with a copy of the order and of the charge and of the evidence taken under section 3.

(Note).

Court of Session.

In the Scheme of this Act, the Court of Session has no function to discharge. Consequently a Sessions Judge cannot act under S. 498, Cr. P.C., and entertain an application for bail from a person to whom the special procedure under this Act has been applied. 14 C.W.N 516. **X**

Joinder of charges.

7. In framing any charge under section 6 the Magistrate may also frame a charge for any offence not specified in the Schedule with which the accused may be charged at the same trial, and the procedure of this Act shall apply to any such charge.

Charge, etc., to be forwarded to High Court.

8. When an order for trial has been made under section 6, the Magistrate shall send the order together with the charge, the record of inquiry and anything which is to be produced in evidence to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

Power to summon supplementary witnesses.

9. (1) The Magistrate may, if he thinks fit, summon and examine supplementary witnesses after the order for trial and before the commencement of the trial.

(2) When the Magistrate examines witnesses under sub-section (1) he shall forthwith cause the accused to be supplied with a copy of the evidence of such witnesses.

Witnesses for defence.

10. The accused may at any time before his trial give to the Clerk of the Crown or other officer as aforesaid a list of the persons whom he wishes to be summoned to give evidence on his trial.

Procedure in High Court 1.

11. (1) All persons sent for trial to the High Court under this Act shall be tried by a Special Bench of the Court composed of three Judges.

(2) No trial before the Special Bench shall be by jury 2.

(3) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.

(Notes).

1.—"Procedure in High Court."

Barristers—Vakils—Right of exclusive audiences—Special tribunal.

Barristers have the right of exclusive audience before the Special Tribunal formed to try cases sent up for trial to the High Court under the provisions of the Crl. Pro. Amendment Act. 13 C.W.N. 605. **Y**

2.—"No trial....Jury."

Trial without jury.

(*a*) "It is perfectly obvious that in the conditions which exist while anarchy is in the air, and while public feeling is in a state of high tension, trial by jury of such cases is most unsuitable. Jury trial is still in its infancy in India, and it is only within the original jurisdiction of the High Court that offences against the State are now triable by jury." **Z**

(*b*) Anarchical crimes, whatever section of the Penal Code they may fall under, are in substance, offences against the State. No argument is required to justify the substitution of three Judges of the High Court for a jury in such cases. See the Proceedings of the Council dated 11th Dec. 1908. **A**

(*c*) "This dispensation of trial by Jury before a special Bench need not be regarded as in the nature of any serious hardship considering that it is counterbalanced by such trials taking place before three Judges of experience and independence." See Proceedings of the Council, dated 11th Dec. 1908. **B**

Bail 1.

12. No person who has been remanded to custody in the course of proceedings under this Act shall be released on bail under the provisions of section 497 of the Code of Criminal Procedure, 1898, if there appear to be sufficient grounds for further inquiry into the guilt of such person. V of 1898.

(Notes).

1.—"Bail."

[**N.B.** For further notes, see Notes under "Act XIV of 1908," *supra*.]

(1) **Ss. 12, 14 (1) Bail—High Court's power to grant bail to accused tried under the Act—Cr.P.C., 1898, Ss. 498, 497--Discretion, exercise of—Cognizance, taking, what amounts to.**

(*a*) The power of the High Court to grant bail to an accused person under S. 498 of the Cr.P C. is untouched by the provisions of the Criminal Law Amendment Act, 1908. 14 C.W.N. 512=6 Ind. Cas. 8. **C**

(*b*) But in exercising its discretionary power under that section, the High Court will take into consideration the terms of S. 12 of the Act whereby the powers of Courts other than the High Court and the Sessions Court of releasing the accused on bail, given by S. 497 of the Cr.P.C., have been made subject to the proviso that no person remanded to custody in the course of proceedings under the Act shall be released on bail if there appear to be sufficient grounds for enquiry into his guilt. (*Ibid.*)**D**

(*c*) *Quære*—Whether there is anything in S. 498, Cr.P.C., 1898, as to the granting of bail by the High Court which is inconsistent with the special procedure prescribed by Part I of the Act of 1908, and is, therefore abrogated by S. 14 (1), of that Act. **E**

It must be held that there is not. 14 C.W.N. 512 (516). **E 1**

(*d*) In the first place, S. 498 of the Code is not referred to in S. 12 of the Act, and *prima facie*, the provisions of the former are left intact. (*Ibid.*)**F**

(*e*) Secondly, as a prominent feature of the special procedure before a Magistrate under the Act is the absence of the accused during the Magisterial enquiry, it is difficult to see how the grant of bail by proper authority can be called in question. (*Ibid.*) **G**

(*f*) And, thirdly, as the scheme of the Act is the commitment by the Magistrate direct to the High Court, there is nothing in High Court, which is inconsistent with that special procedure. (*Ibid.*) **H**

(*g*) Then, it is open to the Judge of the High Court to exercise the power of the High Court under S. 498, Cr.P.C., 1898. (*Ibid.*) **I**

(2) **Law relating to the granting of, to accused persons tried under the Criminal Law Amendment Act.**

A comment on 14 C. W. N. 512 and 516.

(*a*) "The cases of 14 C.W.N. 518 and 14 C.W.N. 516 lay down the law relating to the granting of bail to accused persons whose cases are being tried under the Criminal Law Amendment Act. The propositions which these cases lay down may be thus summed up: (1) That the Sessions Judge has no jurisdiction to grant bail in these cases, (2) that the High Court has jurisdiction, (3) that in exercising this jurisdiction the High Court will take into consideration the new limitations on the powers of the lower Courts imposed by S. 12 of the Act, *viz.*, that bail should not be granted if there appear to be sufficient grounds for enquiry into the guilt of the accused peron." 14 C.W.N. cxlv to cxlvii. **J**

(*b*) "So far as the jurisdiction of the High Court is concerned there is no question as to the soundness of the decision. S. 498 of the Criminal Procedure Code lays down the law on this subject too clearly to be questioned and the inference is wholly unwarranted that this provision

1.—"Bail"—(Continued).

has been anywise affected by the new Act. The only restriction placed upon the application of the Criminal Procedure Code generally by new Act is that it shall not apply where its provisions are inconsistent with the procedure laid down in Part I of the Act. As their Lordships Lord Stephen and Carnduff, JJ., have clearly shown, no such inconsistency exists as regards S. 498 so far as the High Court is concerned." (*Ibid.*) K

(*c*) "We think however that the same argument applies with equal force to the jurisdiction of the Sessions Judge. S. 498 distinctly confers jurisdiction as to bail on the Sessions Court and no principle of interpretation would justify us in interpreting the words "Court of Session" as the Court to which appeal or commitment would lie. It is important to bear this distinction in mind in order to properly apply the provisions of S. 498 to cases under the new Act. For if the power were given to the Sessions Court *qua* the Court of appeal or the Court to which the commitment would be made, it might with justice be said that the new Act by taking away from the Sessions Court the character of a Court trying the case on commitment also takes away the power which this Court exercised as such. If on the other hand the Sessions Court exercises the power under S. 498 not as an appellate Court or the Court of commitment but *qua* Sessions Court, by virtue of the general control which it exercises over Magistrates in their judicial capacity, it cannot be said that any shearing off or abolition of its power as the Court of Commitment *ipso facto* sweeps away its powers under S. 498." (*Ibid.*) L

(*d*) "It is noticeable in this connection that although their Lordships deny to the Sessions Judge the jurisdiction to grant bail, they recognise even with reference to these special proceedings that "the Judge was the superior judicial authority," and that "he was entitled to ask for everything that he required in the case and the District Magistrate had no right to refuse it." This would go to show that, in the opinion of their Lordships, even in these special cases the Sessions Judg had an authority over the Magistrate which was obviously independent of his powers as the Court to which the accused should be committed for trial or as the Court of Appeal. If that be so, when any power belongs to the Sessions Judge as a superior judicial authority, we fail to find how such power could be taken away by any law which takes away his jurisdiction as a Court of Commitment." (*Ibid.*) M

(*e*) "Their Lordships base their decision of the question of jurisdiction of the Sessions Judge on S. 14 of the new Act which provides that no provision of the Criminal Procedure Code shall apply to proceedings under the Act if it is inconsistent with the procedure laid down in Part I of the new Act. Part I of the Act lays down that where a Magistrate takes cognizance of a case under this Act he may either acquit the accused or commit him to the High Court for trial, or, if he thinks that an offence provided for by the new Act has not been committed he may commit him to the Court of Sessions. This, in the opinion of their Lordships, distinctly aims at eliminating the Sessions Judge as the Court of Commitment or Appeal and is therefore inconsistent with the powers of the Sessions Judge

1.—"Bail"—(Continued).

under S. 498. This proceeds on the hypothesis that the power to grant bail does not exist in the Sessions Court except in so far as it is the Court of Commitment." *(Ibid.)* N

(*f*) "That this position is wholly untenable will be evident on an examination of the provisions of the Code itself. Under S. 447 of the Code when a European British subject is accused before a Magistrate of an offence which is punishable with death or transportation for life, the Magistrate has to commit him to the High Court, but if the offence which has been committed is not so punishable he has to commit him to the Court of Session. It cannot be seriously contended that in such cases simply because the Sessions Court ceases to be the Court of Commitment it also ceases to have the power to admit the accused to bail under S. 498. It is true that if the offence is of a particular class there is a chance that the commitment may be to him instead of the High Court, but so also under the new Act is there a chance of commitment to the Sessions Court. The mere fact that the offences are classified by name in the Act, rather than by a description as in S. 447, cannot surely make any difference." *(Ibid.)* O

(*g*) "The case of the Magistrate taking cognizance of a case in accordance with the special procedure laid down in Chap. XXXIII of the Criminal Procedure Code and that of his taking cognizance of a case under the special procedure laid down in the new Act are quite parellel. The argument applied by their Lordships in the latter case would thus lead, when applied to the former, to the conclusion that in every case where a Magistrate has taken cognizance of a case in which a European British subject is accused under circumstances when there is a chance of a charge of an offence punishable with death or transportation for life being made out, the Sessions Judge ceases to have the jurisdiction under S. 498 of enlarging the accused on bail, not only when the accused has been committed to the High Court but from the moment that the Magistrate takes cognizance of the case. This may have been one of the reasons why the Legislature gave the power under S. 498 not to the Court of Appeal, or to the Court of Commitment but to the Court of Sessions by name." *(Ibid.)* P

(*h*) "It cannot be said that S. 14 of the Criminal Law Amendment Act makes any difference between the two cases. For S. 14 explicitly lays down what is a well recognized principle of interpretation that a general law is to be regarded as qualified by any special law on the subject. The same provision only in somewhat different and perhaps clearer terms is laid down also with reference to trials of European British subjects by S. 463 of the Cr.P.C. Besides, it is a well known principle of interpretation that a jurisdiction cannot be taken away except by express repeal or by the enactment of provisions clearly inconsistent with the jurisdiction, so much so, that the existence of that jurisdiction would render the subsequent provision nugatory. It cannot be seriously contended that by recognizing the jurisdiction of the Sessions Judge to grant bail any portion of the provisions of the new Act would be rendered nugatory. In such cases, simply because a special procedure is provided, it cannot be said that the old jurisdiction which can be exercised without affecting either the new jurisdiction or the new procedure is taken away by implication. To

I.—"Bail"—(Concluded).

support the conclusion that the Sessions Judge's jurisdiction to grant bail has been taken away, their Lordships have had in fact to premise that the Sessions Judge's jurisdiction had been taken away for all purposes. But to hold this without first considering whether the jurisdiction as to bail has in fact been taken away is simply to beg the question." (*Ibid.*) Q

i) "With reference to the last point of the decisions we are afraid we cannot quite follow their Lordships. It has been held, and their Lordships also hold that the jurisdiction of the High Court under S. 498 of the Code is unfettered by the restrictions imposed by S. 497. The power of a Magistrate under S. 497 are restricted by S. 12 of the new Act to the extent that bail cannot be granted where there is sufficient ground for further enquiry. Their Lordships are of opinion that although their discretion to grant bail is unfettered they will in granting bail take into consideration the provisions of S. 497 and *a fortiori* also this new restriction imposed on the Magistrate's power in respect of bail. We are afraid, this way of hampering the discretion of Judges is of doubtful policy or it may gradually lead to the practical disappearance of the distinction between the powers under Ss. 497 and 498. Further where S. 12 of the new Act refers to S. 497 and advisedly does not restrict the scope of S. 498 even by a way of recommendation, it would be scarcely consistent with the intention of the Legislature to impose this new restriction on the discretion of the Judges. However, even as the law now stands on these interpretations, if a strong case is made out on other grounds we are sure the High Court will not refuse to exercise its discretion to grant bail even though there may be reasonable grounds for further enquiry. When occasion arises we hope the question of jurisdiction of Sessions Court will also be reconsidered." (*Ibid.*) R

Special rule of evidence.

13. Notwithstanding anything contained in section 33 of the Indian Evidence Act, 1872, the evidence of any witness taken by a Magistrate in proceedings to which this Part applies shall be treated as evidence before the High Court if the witness is dead or cannot be produced and if the High Court has reason to believe that his death or absence has been caused in the interests of the accused. I of 1872.

(Note).

Justification for the provision.

"The provision incorporated in S. 13 is fully justified by the unfortunate event that took place lately in the Alipur Jail." See the Proceedings of the Council, dated 11th December, 1908. S

Procedure.

14. (1) The provisions of the Code of Criminal Procedure, 1898, shall not apply to proceedings taken under this Part in so far as they are inconsistent with the special procedure prescribed in this Part. V of 1898.

(2) When holding a trial under section 11, the Special Bench shall apply the provisions of Chapter XXIII of the said Code with such modifications as may appear necessary to adapt those provisions to the case of a trial before the High Court without a jury.

V of 1898.

(Notes).

[**N.B.**—See, also, Notes under "Act XIV of 1908" and S. 12].

(1) **Bail—Sessions Judge's power to grant bail—Cr.P.C. (Act V of 1898), S. 498—Sessions Court, superior to District Magistrate—District Magistrate's duty to send to Sessions Judge when called for.**

(*a*) Where the provisions of Part I of the Criminal Law Amendment Act have been applied to proceedings before a Magistrate in respect of an offence, the Sessions Judge ceases to have jurisdiction to grant bail under S. 498 of the Cr. P.C., the exercise of such jurisdiction being inconsistent with the special procedure prescribed in the said Part. 14 C.W.N. 516=6 Ind. Cas. 10=37 C. 439. **T**

(*b*) The proper Court to apply to for bail in such a case is the High Court whose power to admit to bail is not affected by the Act. (14 C.W.N. 512; *R.*) (*Ibid.*) **U**

(*c*) The District Magistrate acted improperly in not sending the records to the Sessions Judge when he called for them. (*Ibid.*) **V**

(*d*) "The question is whether the power of the Sessions Judge to grant bail in cases to which the Act does not apply, is inconsistent with the procedure prescribed by Part I of the Act; and we are of opinion that it is for the following reasons." 14 C.W.N. 516 (519)=6 Ind. Cas. 10. **W**

(*e*) "The procedure prescribed by Part I of the Act is prescribed in Ss. 3 to 12 and an essential feature of it is that there shall be a commitment by the Magistrate directly to the High Court, and the power of the Sessions Judge to try the case, which he would have were it not for the Act, is taken away." (*Ibid.*) **X**

(*f*) This is consistent with the preamble of the Act, which recites that it is expedient to provide for the more speedy trial of certain offences, as the effect of the Magistrate committing to the High Court is to eliminate a trial by the Sessions Judge and to provide that the accused should be tried at once and finally by the tribunal to which he would have a right of appeal if the ordinary procedure were followed, it being assumed that he would exercise this right if he were convicted by the Sessions Judge of one of the offences to which the Act applies. (*Ibid.*) **Y**

(*g*) "The elimination of the Sessions Judge as a trying Court seems to us to indicate that he is not to exercise his normal power of granting bail. The Act provides what is nearly a complete course of procedure." (*Ibid.*) **Z**

(*h*) It does not give the Magistrate power to summon witnesses, which he must therefore do under the Cr. P.C., but it casts on him a duty to record evidence, to discharge the prisoner in some circumstances, and to commit him to the High Court in others, and it does this as nearly as may be in the terms of the Code." (*Ibid.*) **A**

(*i*) This shows that the prescribed procedure is exclusive as far as it goes, and lends force to the argument that, if the jurisdiction of the Sessions Judge is eliminated for one purpose it is eliminated for another. (*Ibid.*) **B**

(*j*) The taking away of the normal power of the Sessions Judge to grant bail is also consistent with the speedy trial recited in the preamble. (*Ibid.*) **C**

(*k*) "It has already held in 14 C.W.N. 512 that the power of this Court to admit to bail is not affected by the Act, and the taking away of this power from the Sessions Judge does not therefore deprive the accused of any right that he is entitled to since he retains his power of applying for bail to a superior, and what we must regard as a more capable tribunal. (*Ibid.*) **D**

(2 **Barristers, right of, to exclusive audience before special tribunal.**

See 13 C.W.N. 605 (**F.B.**) under S. 11, *supra*. **E**

PART II [1].

UNLAWFUL ASSOCIATIONS.

Definitions.

15. In this Part:—

(1) "association" means any combination or body of persons, whether the same be known by any distinctive name or not; and

(2) "unlawful association" means an association—

(*a*) which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts, or

(*b*) which has been declared to be unlawful by the Governor General in Council under the powers hereby conferred.

(Notes).

1.—"Part II."

(1) **Scope of Part II.**

Part II provides for the suppression of unlawful associations. Such persons as are members or in any way assist an association which encourages or aids the commitment of acts of violence or intimidation, or of which the members habitually commit such acts, are made liable to punishment, and a severer punishment is provided for persons managing or promoting such associations. Further the Governor-General in Council is empowered to declare certain associations to be unlawful, and the same penalties are provided for persons who after this declaration maintain their connection with them. (See statement of Objects and Reasons). **F**

(2) **Effect of these provisions.**

"The —— will, it is hoped, be in great measure preventive. It is believed that many of these dangerous associations have a nucleus of organizors, an inner circle, who do the mischief. They entice the young to join them and gradually initiate them into disloyalty and vice. At the same time, by the system of terrorism, which they establish, they induce many older persons, who have no real sympathy with their objects, to help them with subscriptions."

I.—"Part II"—(concluded).

"It is believed that the effect of declaring an association unlawful will be to separate from it many of the young and comparatively guiltless, and also to deter older persons from giving it henceforth the assistance, pecuniary and otherwise, which from inclinations, thoughtlessness or fear they have given it in the past."

"It is hoped to separate the waverers from the real criminals."

"Those who continue to be members, or to take part in the operations or to assist in the management, or to subscribe to the funds, after an association has publicly been declared to be unlawful, will know that they are breaking the law, and will only have themselves to thank for the consequences." See the proceeding of the Council, dated 11th Dec. 1908. **G**

(3) **Nature of the provisions.**

"Its provisions are strong enough to bring to conviction and punishment of the organizors and members at least the most criminal, of these associations without *locus penetentie* which is provided by the executive Government's intervention." (*Ibid.*) **H**

(4) **Scope of the Bill.**

"The Bill provides for the suppression of the unlawful associations and also for the punishment of Managers and promoters of such associations. These associations have added to the difficulty of the situation; they are nothing more than organised bodies for the encouragement and promotion of acts of violence and intimidation.

"These associations or conclaves, where a carnival of sedition is systematically carried on, where revolutionary doctrines are daily preached, where violent and mischievous lies are daily disseminated, where youthful and susceptible minds are led astray and continuously infected with the venom of sedition, distrust and opposition to Government, where ignorant and malicious vilification of Government measures is indiscriminately indulged in, where funds are collected and often extorted under misrepresentation—these associations should no longer be permitted to exist and the interest of society as well as of good Government alike require their immediate and wholesale extinction. See the Proceedings of the Council, dated 11th Dec. 1908. **I**

Power to declare association unlawful.

16. If the Governor General in Council is of opinion that any association interferes or has for its object interference with the administration of the law or with the maintenance of law and order, or that it constitutes a danger to the public peace, the Governor General in Council may, by notification in the official Gazette, declare such association to be unlawful.

Penalties.

17. (1) Whoever is a member of an unlawful association, or takes part in meeting of any such association, or contributes or receives or solicits any contribution for the purpose of any such association or in any way assists the

operations of any such association, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Whoever manages or assists in the management of an unlawful association, or promotes or assists in promoting a meeting of any such association, or of any members thereof as such members, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Continuance of association.

18. An association shall not be deemed to have ceased to exist by reason only of any formal act of dissolution or change of title, but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof.

THE SCHEDULE.

(See section 3.)

1. Any offence under the following sections of the Indian Penal Code, namely :— XLV of 1860.

Chapter VI, sections 121, 121-A, 122, 123 and 124.
Chapter VII, sections 131 and 132.
Chapter VIII, section 148.
Chapter XVI, sections 302, 304, 307, 308, 326, 327, 329, 332, 333, 363, 364, 365 and 368.
Chapter XVII, sections 385, 386, 387, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 431, 435, 436, 437, 438, 440, 454, 455, 457, 458, 459 and 460.
Chapter XXII, section 506.

2. Any offence under the Explosive Substances Act, 1908; and VI of 1908.

3. Any attempt to commit or any abetment of any of the above offences.

APPENDIX.

Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 & 25 Vict., C. 67, and 55 & 56 Vict., C. 14).

The Council met at Government House, Calcutta, on Friday the 11th December, 1908.

PRESENT :

His Excellency the Earl of Minto, P.C., G.C.M.G., G.M.S.I., G.M.I.E., Viceroy and Governor-General of India, *presiding*.
His Honour Sir Edward Norman Baker, K.C.S.I., Lieutenant-Governor of Bengal.
The Hon'ble Mr. H. Erle Richards, K.C.
The Hon'ble Major-General, C. H. Scott, C B., R.A.
The Hon'ble Sir Harvey Adamson, *Kt.*, C.S.I.

The Hon'ble Mr. J. O. Miller, C.S.I.

The Hon'ble Mr. W. L. Harvey, C.I.E.

The Hon'ble Sir G. D. F. Wilson, K.C.B., K.C.M.G.

The Hon'ble Dr. Rashbehary Ghose, C.I.E., D.L.

The Hon'ble Mr. A. A. Apcar, C.S.I.

The Hon'ble Nawab Bahadur Khwaja Salimulla of Dacca, C.S.I.

The Hon'ble Maung-Bah-Too, K.S.M.

The Hon'ble Mr. W. R. H. Merk, C.S.I.

The Hon'ble Sir Rameshwara Singh, K.C.I.E., Maharaja Bahadur of Darbhanga.

The Hon'ble Raja Muhammad Ali Muhammad Khan, Khan Bahadur of Mahmudabad.

The Hon'ble Mr. N. C. Macleod.

The Hon'ble Mr. J. Andrew.

The Hon'ble Mr. Maneckjee Byramjee Dadabhoy.

The Hon'ble Mr. F. A. Slacke, C.S.I.

THE INDIAN CRIMINAL LAW (AMENDMENT) BILL.

The Hon'ble SIR HARVEY ADAMSON moved for leave to introduce a Bill to provide for the more speedy trial of certain offences and for the prohibition of associations dangerous to the public peace. He said:—" My Lord, copies of the Bill which I am moving for leave to introduce have been circulated to Honourable Members together with a Statement of the Objects and Reasons which have led to its being prepared.

" For reasons which I will state presently it will be my duty to ask the Council, in the event of my present motion being adopted, to proceed at once to the consideration of the provisions of the Bill with the view to its being passed at this day's sitting, and I will, therefore, endeavour to explain, as fully and as clearly as I can, the considerations which have influenced the Government in bringing forward this measure.

" The following are some of the more prominent instances of anarchical crime which have occurred in Bengal and Eastern Bengal during the past year. On the 6th December, 1907 an attempt was made to assassinate the Lieutenant-Governor of Bengal by means of a bomb exploded under his train near Midnapore. Two other abortive attempts of a similar nature on Sir Andrew Fraser's life had already been made on the railway line near Chandranagore. On 23rd December, 1907 Mr. Allen, the District Magistrate of Dacca, was shot with a revolver at Goalundo. On 4th March, 1908 Mr. Hickenbotham of the Church Missionary Society was shot near his house at Kushtia. On 11th April an attempt was made to assassinate the Mayor of Chandranagore by a bomb. On the 30th April a bomb intended for Mr. Kingsford who had been Presidency Magistrate at Calcutta was thrown into a carriage at Muzaffarpur and killed Mrs. and Miss Kennedy. On 2nd May the Manicktolla bomb conspiracy was brought to light. On 2nd June a serious dacoity was committed near Nawabganj in Dacca district by a large band armed with guns and revolvers, in which two persons were killed. On 21st June a bomb was thrown into a railway carriage at Kankanara and injured an English gentleman, and there have been several similar attempts in the same neighbourhood. On the 31st August an approver in the Manicktollah case, which is under trial at Alipur, was murdered by a revolver. On 17th September a serious dacoity was committed at Serampore. On 20th and 30th October similar dacoities were committed at Malda and Faridpur districts. Only a few days ago followed a dacoity of the gravest nature in Raita. There is ample reason for believing that all of the dacoities which I have mentioned were committed by young men of the middle classes. On 23rd September a young man was convicted of sending a bomb by post to the Magistrate of Nadia. On the

7th November the fourth attempt was made to assassinate the Lieutenant-Governor of Bengal, on this occasion with a revolver. On 9th November the Native Sub-Inspector of Police, who had arrested one of the Muzuffarpur murderers, was shot dead in the streets of Calcutta. On 13th November the principal witness in a case against the head of an association called the Anuisilan Samiti was murdered and decapitated near Dacca.

" These are examples of the type of anarchical crime that has been prevalent.

" The list is by no means exhaustive but it is perhaps sufficient to exemplify the general methods of the wide-reaching conspiracy with which we have to deal. The object of the conspiracy, and there is no attempt to conceal it, is to subvert British rule and to render the administration of justice impossible. The methods are the assassination of officials, English and Indian, indiscriminately, the murder of hostile witnesses, the terrorizing of all who oppose the conspirators, and the organization of dacoity on a large scale for the purpose of defraying the cost of the operations. One of the most lamentable incidents is that young men are made use of to carry out the purposes of the conspirators, mere boys, with no other criminal taint, the sons of respectable parents, who do not belong to and have never associated with the ordinary criminal classes, but who by the incitements of seditious teaching have been imbued with a misguided fanaticism and have been led to the mistaken belief that in committing crimes of this nature they are working for the good of their country. The Muzaffarpur murderers had hardly emerged from boyhood. The student who a few days ago attempted to assassinate Sir Andrew Fraser was a boy of eighteen.

" I have sometimes heard the opinion expressed that murderous anarchists are few in number, that they are merely a handful of young men who have been driven to fanatical frenzy by the teachings of sedition. I should be sorry to believe that there are many young men who have lost their senses to the extent of being ready to commit murder. But be they few or many, there can be little doubt that so long as conditions favourable to the creation of anarchy among the young remain in existence, this form of madness will from time to time come into evidence. The confessions of the Muzaffarpur murderer and the statement of the young man who last month attempted to shoot Sir Andrew Fraser leave no doubt as to the influences which are driving the young to homicidal frenzy. Immature minds are perverted by the doctrine of hatred to a foreign Government that is insidiously instilled into them by a section of the community that has assumed the attitude of being irreconcileable. That is the root of the matter and the prime cause of anarchist outrage by the young. It is the bounden duty of a responsible Government to close every avenue that leads to this cause. On two occasions during the past year we have legislated to strike at the origin of the evil. First, we passed the Seditious Meetings Act. It was aimed at preventing seditious orators from stumping the country and inciting students and others to acts of disorder and violence by seditious orations. This Act was, unfortunately I think, surrounded by safeguards which rendered it somewhat difficult to be put in operation on sudden and isolated occasions, but its presence on the Statute-book has exercised a great preventive influence. Since it was passed we have heard little of the compaigns of inflammatory oratory which produced so much harm in the Punjab and elsewhere in 1907. The second was the Newspapers (Incitement to Offences) Act. It was directed against incitements to murder and violence in newspapers, and I may say that since it came into operation there has been an almost total cessation in newspapers of those incitements to assassination which before the existence of the Act were a matter of daily occurrence in a depraved section of the Press. The preventive effect of the Act has been most marked throughout India, and in the rare cases in which it has been found necessary to resort to its application its provisions have been found to be entirely adequate.

For the evil which amounts to sedition but which falls short of incitement to murder or violence we have relied on a systematic use of the ordinary penal law, not with absolute success, for we cannot always get as the man who is really responsible, and also a newspaper writer can do much to incite to the subversion of order without rendering himself liable to prosecution for sedition, but with such a measure of success that it can at all events be safely said that the Indian Press is a cleaner press to-day than it was a year ago.

"But of late another incentive to draw the youth of the country into the fold of anarchy has come largely to the front, perhaps a greater incentive than either seditious writing or inflammatory speaking, in the shape of disloyal associations. These associations, known as samitis, and consisting of what are called volunteers, were first formed in 1902, but they did not come much into evidence till 1906. They have developed with the most surprising rapidity. Almost all districts in Eastern Bengal have their volunteer organizations, many of which owe their origin to and are branches of samitis in Calcutta. In the rural parts of Bengal they are developed to a less formidable extent. Many of the members and in some cases event he patrons may be unaware of the objects of the organizers, but the information which we are constantly receiving from districts places it beyond doubt that the majority of these associations are maintained with the object of training youths in the use of arms and fitting them to take part in a general revolution that is hoped for. Outwardly professing to be devoted to such laudable objects as keeping order at meetings and helping pilgrims at festivals, they have been largely used for the forcible boycott of foreign goods, and for terrorizing the community. The members often claim to travel free, and they have not hesitated to assault officers of steamer and railway companies who have refused them accommodation. In many cases such officers either from sympathy or from fear have refrained from enforcing payment of fares. They practice drill, engage in sham fights and parades, and encourage a martial spirit with an ultimate object which there is little attempt to conceal. These samitis have exercised a demoralizing effect on the youth of the country, causing them to neglect education and to set at nought the authority of parents, until gradually the heads of the samitis have assumed complete control over the boys. An insulting demeanour towards Europeans is constantly paraded and is a cause of common complaint. In many cases the members have been guilty of serious assaults. There is every reason to believe that dacoities have been organized on a large scale by volunteers. These crimes have been accompanied by murder and arson. Every endeavour is made to suppress evidence regarding them and to put obstacles in the way of police investigation. Only a few days ago the arrest of a captain of volunteers was followed by the murder of the principal person who was to bear witness against him. Some of those who composed the anarchist society discovered at Manicktolla garden were members of volunteer societies both in and outside Calcutta, and there can be little doubt that but for their arrest the pernicious knowledge which they obtain would have been eventually extended to the members of their own associations. In Sylhet three of the Manicktolla conspirators were arrested in their homes in possession of explosives, a fact which indicates that but for the discovery in Calcutta we might have had an equipped body of anarchists in the Eastern province. The total number of volunteers in the Eastern province is now estimated at from ten to fifteen thousand. At first the movement received some support from zamindars and native gentry. Parents did not discourage their sons from joining. But recent indications show that the community are beginning to realize the demoralizing effect that these associations have exercised on the rising generation. In Dacca in several cases parents have appealed to the authorities for help to rescue their sons who have been induced to join associations and have not been permitted to leave them. These, and other facts, which for obvious reasons I should not disclose at present, show

conclusively that many of the samiti or volunteer associations are in reality associations made for the commission of crime and for the furtherance of the anarchical movement, and that they constitute a dangerous and formidable system of intimidation and terrorism which operates so as to make it almost impossible to obtain evidence for the conviction of criminals. They are in fact nurseries for young anarchists.

"In this connection I will read an extract from a note written by an elderly Indian gentleman whose home is in Eastern Bengal and who has had exceptional opportunities of judging of the conditions prevailing among the people in the mufassal as well as in the district towns. Speaking of these associations he says:

> 'They are in fact the terror of the country. They have taken to dacoities, thefts and robberies, they set fire to houses, they kidnap boys, they commit murders, and in fact there is nothing in the list of crimes they would be ashamed of, if thereby they could serve what they call their cause, that is, salvation of India and the destruction of the foreign Feringhee Government. They have their *akras* and public or private meeting places in every town, where they meet to learn playing with *lathis* or daggers. They have secret places where they practise shooting with pistols or revolvers, and they have *chelas* or disciples in almost every village in the interior of the country. These are the men who have now become the practical masters of the situation. Village men, rich or poor, submit to their dictum in ninety cases out of a hundred, simply from fear. Shopkeepers act up to their instructions because they know that disobedience will bring upon them disastrous consequences. Even the women of the village, cultured ladies and the illiterate maids and matrons, ask them what cloth to put on, when to fast, when to weep and what to do with their boys. The Government ought to be solemnly assured that the whole country would rejoice and feel a sense of relief if the aforesaid *akras* and *samitis* are shut up at once. . . . . A large portion of the people who are now suspected as seditionists are so from fear. They fear the anarchists and their volunteers who are strong in the field. They fear to be attacked at night by dacoits and incendiaries, or to be done to death by the political assassin's dagger. If they find that the Government is strong enough to give them real protection, they will rejoice at heart, and with thanks to God and the Government of the country, cut off all connection with the agitators for good.'

"I now turn to another subject, the means provided by the Criminal Procedure Code for bringing anarchical crimes to trial. These crimes generally involve an element of conspiracy, and their prosecution is a matter of great complexity. The witnesses are numerous, each giving his *quota* of evidence on, it may be, only one link of the chain that connects the accused with the offence. I will assume that the police have discovered the existence of an anarchical conspiracy, and acting on a reasonable suspicion have arrested the accused. It takes a long time to unravel the web of a conspiracy. This is always a tedious task in India, where the public are disinclined to come forward and give assistance to those who are investigating the offence, and it is a still more tedious task when the offence has a political aspect and the tendencies to suppress evidence and terrorize the witnesses, to which I have already referred, come into play. There must be considerable delay in such cases before the offence is completely investigated and is ready for trial. Then come protracted proceedings in the Committing Magistrate's Court, and delays while applications are being made to the High Court on all sorts of interlocutory matters. Meanwhile the Press are not only reporting the proceedings but in many cases, owing to the imperfections of the law of contempt, are commenting in leading articles on the features in a manner which cannot but interfere prejudicially with the serenity of a trial where political issues are at stake. Next come the proceedings in the Sessions Court in which all the evidence is heard over again. And

finally comes the appeal to the High Court. The result is that cases of a complex nature which excite strong political feeling are pending before the various Court and are held up to public notice for an utterly disproportionate time. The Manicktolla Bomb Factory was discovered on 2nd May. It is now the middle of December and the case is still dragging out its weary length in the Sessions Court. It is believed that the Sessions trial will not be completed for some months, and if it results in a conviction, the appeal to the High Court may occupy some months more. It is not anticipated that the trial will be finally concluded within a year from the date of arrest of the accused. Meanwhile the presence of a large number of persons under trial at Alipur in a case of a political nature has proved to be in itself a source of danger. For a whole year the proceedings are a daily subject of comment in the newspapers, some of which have habitually commented on them in a highly improper way. This one case alone has been sufficient to keep the whole country in a ferment and will continue to do so until it is finally brought to a conclusion. Similar remarks apply to the recent inquiry at Midnapore, and we may expect the same result to follow when other cases which are now in an advanced state of detection come before the Courts. The fact is that the ordinary Criminal Procedure of India is ill-suited to cases of this kind. The machinery is framed in the interests of a simple people liable to oppression in the name of the law. The object aimed at in every turn is the laudable one of protecting the innocent. But India has changed since the lines of the Criminal Procedure Code were first drawn, and the most notable change is the enormous increase of lawyers of the greatest ability and of infinite subtlety who are available for the defence of accused persons. The result is—and I do not blame the lawyers who are perfectly right in taking every lawful advantage in the interests of their clients—that the main difficulty now lies not in safeguarding the innocent but in securing the punishment of the guilty. It is in my opinion a question which is daily gathering importance in India, whether the elaborate precautions of our Criminal Procedure are not capable of considerable simplification. I am throwing this out only as a reflection of my own. The simplification of procedure that is aimed at in the present legislation is not intended to affect the criminal law generally, but merely to provide for the more speedy trial of such cases of complexity as may arise from anarchical conspiracies.

"I have now explained the conditions which necessitate legislation and commented on the objects at which the Bill aims. These objects are twofold: (1) to obtain the prompter decision of criminal cases of a complex nature arising out of an anarchist conspiracy; (2) to obtain an effective way of dealing with criminal associations. How these objects are met I can perhaps best explain by going through the Bill.

"The first part of the Bill contains the procedure for bringing cases of the kind to which I have referred before a Bench of the High Court for trial. The Bench will consist of three Judges. The trial will be without jury. It is perfectly obvious that in the conditions which exist while anarchy is in the air, and while public feeling is in a state of high tension, trial by jury of such cases is most unsuitable. Jury trial is still in its infancy in India, and it is only within the original jurisdictions of the High Courts that offences against the State are now triable by jury. Anarchical crimes, whatever section of the Penal Code they may fall under, are in substance offences against the State. I do not think that any argument is required to justify the substitution of three Judges of the High Court for a jury in such cases. In order to obviate the long committal, provision is made for a simpler method of bringing the case to trial. The first stage will be the arrest of an accused person and the bringing of him before a Magistrate. These steps will be taken under the ordinary law. At any time after the Magistrate has taken cognizance the Local Government, with the previous sanction of the Governor-General in Council, is empowered to make an order applying this part of the Bill to the case. The next stage is an inquiry by the Magistrate

in the absence of the accused in order to ascertain if the evidence is sufficient to put the accused upon his trial. If in his opinion the evidence is insufficient the accused will be discharged. If, on the other hand, the Magistrate finds that the case is established *prima facie*, he will frame charges and furnish the accused person with a copy of the charges and of the evidence against him, and direct that he shall be sent to the High Court for trial. The accused will then be permitted to furnish to the Clerk of the Crown a list of the persons whom he wishes to be summoned to give evidence in his defence. The procedure in fact may be described briefly as differing from the existing committal procedure only in being *ex parte*.

"The Bill provides further that after the Local Government has directed that the provisions of the Bill shall apply to the case, bail may be refused if there is reasonable ground for further inquiry into the guilt of the prisoner. The question whether there is reasonable ground is one for the Magistrate to decide. The existing law is that a person accused of a non-bailable offence shall not be released on bail if there appear reasonable grounds for believing that he is guilty. We think that in cases of anarchical crime, where a system of terrorising has been established, it is necessary that during investigation and inquiry the accused should be detained in custody so long as a reasonable ground remains for further inquiry into his guilt.

"A further provision of this part of the Bill refers to witnesses: cases have occurred in which the murder of witnesses has prevented their evidence previously recorded from being admissible in subsequent stages of the case. In an ordinary committal, if a witness were examined, and tendered for cross-examination, and then died, his evidence would be admissible at the Sessions trial, even although he had not been cross-examined. In the procedure which I have described there can be no opportunity for cross-examination. The Bill provides that when a witness has been examined by the Magistrate, his evidence will be admissible before the High Court if the Judges composing the Bench have reason to believe that his death was caused in the interests of the defence. The object is to remove an incentive for murder. I do not think that this provision requires any special justification. Of course the weight of the evidence recorded without cross-examination is a matter entirely for the High Court to determine.

"As regards the offences that may be referred for trial to the special tribunal, a considerable discretion is left with the Government. One anarchical crime may be a simple case which can properly be tried by the ordinary Courts. Another may be a long and complicated case which there would be advantages in referring to this tribunal. We have included a wide category of offences. It is intended that the power of transfer shall be exercised only in cases which, from their complexity or for other special reasons, cannot conveniently be tried by the ordinary process.

"For the procedure enacted in this part of the Bill I claim that while giving the accused a fair trial it will greatly shorten the proceedings in complex cases, and will at the same time put a stop to the publicity and improper comments which have characterized the Alipur and Midnapur cases and kept the public mind in a condition of tension for so many months. The preliminary inquiry, held *ex parte*, and deprived of the accompaniment of lawyers, whose name in these cases is legion, will be greatly curtailed. As the trial will be held before the highest tribunal in the land, the decision will be final. There will in fact be only one public trial instead of three. And last, but not least, the trial will take place in a Court which has the fullest power to deal with contempts, and which will not be compelled to tolerate improper comments on a pending case.

"Part II of the Bill deals with associations. It defines an association in broad terms. It then defines an unlawful association as an association—

(1) which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts, or

(2) which has been declared to be unlawful by the Governor-General in Council.

"The next clause gives the Governor-General in Council power to declare any association to be unlawful when he is satisfied that it interferes with the administration of law or the maintenance of law and order, or constitutes a danger to the public peace. Then follow the penal clauses, which are two, the first making it punishable up to a term of six months' imprisonment to take part in the meetings of an unlawful association or to contribute or receive or solicit contributions for it or in any other way assist its operations, and the second making it punishable up to a term of three years' imprisonment, to manage or assist in managing or promote the holding of meetings of unlawful associations.

"The effect of these provisions will, we hope, be in great measure preventive. We believe that many of these dangerous associations have a nucleus of organizers, an inner circle, who do the mischief. They entice the young to join them and gradually initiate them into disloyalty and vice. At the same time, by the system of terrorism which they establish, they induce many older persons who have no real sympathy with their objects, to help them with subscriptions. We believe that the effect of declaring an association unlawful will be to separate from it many of the young and comparatively guiltless, and also to deter older persons from giving it henceforth the assistance, pecuniary and otherwise, which from inclination, thoughtlessness or fear, they have given it in the past. We hope to separate the waverers from the real criminals. Those who continue to be members, or to take part in the operations, or to assist in the management, or to subscribe to the funds after an association has publicly been declared to be unlawful, will know that they are breaking the law, and will only have themselves to thank for the consequences. In the debate on the Seditious Meetings Bill I explained why in India it is necessary to give arbitrary powers for the purpose of prevention. The reason is that the public are disinclined to support the authorities by furnishing the information which is required in order to put the ordinary law in motion. In England it has happened that bomb conspiracies have been brought to light through information given to the police by chemists from whom large purchases of acid have been ordered. When have we ever obtained information of this nature from chemists in Bengal? But while prevention is an important aspect, the Bill does more than merely provide for this purpose. We trust that its provisions are strong enough to bring to conviction and punishment the organizers and members of at least the most criminal of these associations without the *locus penitentiæ* which is provided by the Executive Government's intervention.

"I have now explained, I hope clearly, the necessity for legislation and the provisions of the Bill. I have only to add that it is to apply in the first instance to the two Bengal provinces, but that power is given to the Governor-General in Council to extend it to other provinces.

"And now, my Lord, I will state the reason which has induced the Government to adopt the unusual course of introducing the Bill and recommending that it should be passed through all its stages at a single sitting of the Council. We consider that to have dealt with this question in the manner in which Bills are ordinarily dealt with, would have been inexpedient, because the public mind is in a condition of tension, and we think it most undesirable to take the risk of starting an agitation, during the period which would be occupied in passing the Bill, which might not improbably intensify the evils which the measure is intended to repress."

The motion was put and agreed to

The Hon'ble SIR HARVEY ADAMSON introduced the Bill.

The Hon'ble SIR HARVEY ADAMSON moved His Excellency the President to suspend the Rules of Business to admit of the Bill being taken into consideration.

The PRESIDENT declared the rules suspended.

The Hon'ble SIR HARVEY ADAMSON moved that the Bill be taken into consideration.

The Hon'ble MR. DADABHOY said :—"My Lord, I feel I cannot content myself by giving a silent vote on this important measure. The Bill, which it is now proposed to be passed into law, has been in fact anticipated by the general public during the past few weeks, and I am sure I am not much wide of the mark when I state that it is in consonance with the common wishes of the representative and influential bodies in Calcutta and elsewhere that this measure has been undertaken. The general public have been greatly distressed by the seditious movements that have sprung into existence during the past eighteen months, and more particularly during the past few months of the present year and have been deeply grieved and alarmed by the cowardly assassinations and attempts at assassination and of the possibility of a repetition of similar crimes in future, and it is therefore no wonder that the discriminating section of the public should loudly call for legislation of a special character which will promptly and vigorously suppress the prevalence of sedition, criminal violence and organised conspiracies in India, and particularly in Bengal.

"It would be sheer imprudence and want of prescience to underestimate the great danger which is confronting us. We must all realise that the situation is getting more and more critical, and public safety and security are being jeopardised. But fortunately the ulcer of discord and disaffection is only on the surface, and it is a business of the greatest statesmanship to grapple with the situation with firmness and promptitude.

"My Lord, I am myself most unwilling to see the introduction of any legislative measure that will take away from any person his right to be tried by the settled rules, organised laws and well-established procedure of his country, yet notwithstanding that in some quarters serious objection may be taken to the introduction of this measure, I think the continuous disturbances of the public peace which have taken place during the last few months and which have unfortunately prevailed long enough and have kept the public in a state of consternation, is amply sufficient to prove the inefficiency of ordinary criminal procedure in times of stress and emergency, however well it may have suited normal conditions. The immediate suppression of organised crime is a matter of no small political and social importance, which in the opinion of all thoughtful men admits of no delay or vacillation. It is now perfectly evident that for the preservation of the public peace and safety and for the suppression of organised crime and the speedy punishment of its promoters and instigators, effective measures should be adopted as expeditiously as possible, and that object can only be attained by taking up legislation of the kind now before the Council so as to afford to the law-abiding and peaceable general public the protection which they are entitled to from the Government of the country.

"Your Excellency only the other day, while addressing the Taluqdars of Oudh, very appropriately remarked 'that the British Raj is determined, as it has ever been, to safeguard the populations committed to its charge It is determined to shut the door in the face of a ruinous anarchy, and, for the special difficulties with which it has to deal, it will not hesitate to forge special weapons.' These are words of true statesmanship, and I venture to assure Your Excellency that in carrying out that policy Your Excellency's Government will have the fullest and whole-hearted support of all right-thinking and law-abiding people who have at heart the true interests, welfare, and the pros-perity of this country. The question before us is not whether the Government has established any necessity for any change in the procedure that is now followed in criminal trials, but whether the ordinary processes of law subsisting at present are sufficient

for dealing expeditiously and with vigour with this new phase of crime which has made its appearance. Any variation in the prescribed methods of procedure will necessarily cause at first some degree of inconvenience and possibly dissatisfaction, but it cannot for a moment be questioned that the existing procedure is entirely powerless to stem the tide of political fanaticism that is a serious menace to the peace of the country. The Alipur trial is one of the many instances of the proof of the unsuitability and inefficiency of our present laws in cases of serious political offences, and it is therefore indispensable that the administration of the law should be so strengthened and fortified by the creation of special tribunals with plenary powers as to deal efficiently, expeditiously, and at the same time justly, with political crime in all its diversified aspects.

"The Bill is simple in its nature and will enable Government to deal effectually with all who are in any way concerned with disseminating the cult of sedition and treason. I believe that there could not be found in the length and breadth of the allied Provinces of Bengal any considerable number of persons who would take exception to the Act. In justice to the Bengali race, I would say that with their keen intelligence they will as a people see nothing in the Act of an arbitrary or objectionable character, and I believe that there is a very general desire among them that conspiracies and sedition should be suppressed even at the cost of some abridgement of the liberty of the people. But the measure in no sense interferes with the liberty of the people, it only aims at suppressing and eradicating the mischief attendant on protracted trials and dispenses with unnecessary publicity which in cases of political trials in this country is proved by experience to be undesirable. The dispensation of trial by jury before a Special Bench need not be regarded as in the nature of any serious hardship, considering that it is counterbalanced by such trials taking place before three Judges of experience and independence; nor does the provision about refusing bail, if there appear to be sufficient grounds for further enquiry, seem to be illogical or particularly oppressive. The provision incorporated in section 13 of the Bill is also fully justified by the unfortunate event which took place lately in the Alipur Jail. I allow that exception may be taken to some of the minor details of the Bill, but this is no occasion to cavil with details. We must approach the Bill in a broad-minded spirit of statesmanship.

"The Bill provides also for the suppression of unlawful associations, dangerous to the public peace, and also for the punishment of managers and promoters of such associations. These associations have added to the difficulty of the situation, they are nothing more than organised bodies for the encouragement and promotion of acts of violence and intimidation.

"I am of opinion that these associations or conclaves, where a carnival of sedition is systematically carried on, where revolutionary doctrines are daily preached, where violent and mischievous lies are daily disseminated, where youthful and susceptible minds are led astray and continuously infected with the venom of sedition, distrust and opposition to Government, where ignorant and malicious vilification of Government measures is indiscriminately indulged in, where funds are collected and often extorted under misrepresentations—these associations should no longer be permitted to exist, and the interests of society as well as of good Government alike require their immediate and wholesale extinction.

"My Lord, I am not an alarmist, but the circumstances now prevailing are of such importance and gravity as to warrant the passing of a law of this nature in the manner Government have adopted. At the present time Your Excellency in Council is doing your best to grapple with a situation of an exceptionally trying nature, and Your Excellency's Government stands in need not only of silent sympathy but of all the assistance that it can obtain. You have to deal, my Lord, not only with an unusual form of political crime, but simultaneously work out a programme of wise,

timely and far-seeing reforms that will meet new aspirations and satisfy the new conditions that have of late arisen in this country.

"I am glad that this legislation is in the first instance only made applicable to the disturbed Provinces of Bengal. The other Presidencies are happily free from a state of chronic disturbance. I pray that Government may find no occasion to extend the Act to any other part of the country. But, my Lord, though I support this legislation, I must most distinctly state that I should not like to see it permanently placed on the Statute-book of our country, and I would urge that as soon as a normal state of things is restored in Bengal and Eastern Bengal,—and I trust that may be not far distant,—Your Excellency's Government will set itself to repeal this measure. I think it would be advisable and more popularly acceptable if the Hon'ble mover of the Bill could see his way to insert a provision limiting the operation of the Act for a stated period only.

"I shall conclude, my Lord, by stating that the value of any particular measure is not always correctly appraised when it is first introduced as when actually applied and put in operation. I have no doubt that time alone will show the wisdom and propriety of this measure and will establish the benevolent intentions of Government."

The Hon'ble RAJA ALI MUHAMMAD KHAN said :—"My Lord, the reasons which have led to the introduction of this Bill are as well known as they are deplorable. I can say only one word in its support, that it comes before us none too soon. There is a notion abroad that the existing law is sufficient to meet all kinds of cases and that harsh and summary measures are not in keeping with constitutional methods of Government. In every age and country political offences have been treated separately from ordinary offences and we can find a parallel for similar legislation in the various forms of enactment for high treason in the history of civilized England. And what are those misguided and irresponsible people guilty of, who from a mistaken sense of devotion to the cause of their country aim at getting a cheap notoriety by committing outrageous assaults on the representatives of Government? They are not only traitors to the Crown but are the worst enemies of their own country. I believe sincerely that the measures proposed are not of a vindictive nature, and that Your Excellency will not lose sight of the greatest good of the greatest number on account of the evil deeds of a wicked few. While supporting the Bill strongly in substance, I would observe that in my humble opinion the remedy prescribed seems inadequate. However desirable it may be to secure the speedy punishment of offenders, it is not likely to strike at the root of the evil or to prevent further outbursts of anarchism. I would suggest the necessity of continued precautionary measures and of tracking that wild creature, called the anarchist, in his secret haunts. Once the policy of *laissez faire* on the part of Government is changed, the attitude of the people will change accordingly and the united efforts of both may go a great way to lessen, if not to remove, the danger."

The Hon'ble MAHARAJA OF DARBHANGA said :—"Your Excellency, the measure which has just been laid before the Council is one framed to meet exceptional circumstances by exceptional methods. The Bill is to provide for the more speedy trial of certain offences and for the prohibition of associations dangerous to the public peace. The ordinary forms of criminal procedure in the cases of persons accused of anarchy, sedition, incitements to murder, inflammatory speeches and writings against the Government, or any of the other offences scheduled in the Bill, having been tried and found wanting, I think your Government is right in asking for the power required to bring all such offenders to a speedy trial. I should have liked to have had more time to examine the clauses of the Bill in detail, but as this has not been found to be practicable, I must necessarily confine my observations to criticism of a more general nature. I give my hearty support to this measure, all the more because I am convinced that the

crimes specified are confined within a very limited sphere, and are abhorred by an overwhelming majority of the inhabitants of the two Bengals, who are loyal and law-abiding and upholders of all that makes for peace and social order. And here may I put in a word on behalf of a much maligned class, in connection with the recent events of an anarchical order. I mean the students of our colleges. Because a few misguided young men acting under bad advice have been guilty of grave offences against religion and law, it has been assumed in certain quarters that the students as a class are on the side of anarchy and sedition. There never was a fouler calumny. There may be of course a few black sheep to be found in all classes. But we do not brand a whole class with the tar-brush because an exceptional few have disgraced themselves by their bad conduct. The students have undoubtedly experienced an awakening through the light of education and the infusion into their minds of Western knowledge, and it is natural that these young men should aspire to a higher and more useful political life than has hitherto been their lot, but all their agitation towards that end should be of a healthy order, entirely in conformity with loyalty to the Government and to the peace of the community.

"My Lord, I give my hearty assent to the measure now before the Council. The second part of the measure I acknowledge to be right, and the absolute power vested in the Governor-General in Council to declare certain associations unlawful, and as such liable to the penalties provided under the Act, will, I think, prove to be the most powerful deterrent to the formation or to the continuance of such unlawful assemblies. I have every confidence in the wisdom of the Governor General in Council that the absolute power thus placed in his hands will be used with great discretion, although there is nothing said in the Bill of the procedure which will be taken in order to bring the existence of unlawful assemblies to the knowledge of the Governor General in Council to enable him to wield his power with judgment. I am confident that if Your Excellency or the Hon'ble Member in charge of the Bill would give us some sort of outline of the methods to be employed in finding out whether certain assemblies are lawful or unlawful, it would tend to allay a feeling sure to arise in the community, as to whether law-abiding households might be liable to receive domiciliary visits from the police, either with or without warrant, and at all hours of the day or night. I am sure it is the wish of the Government that no peaceable household should be disturbed, but we would like an indication of the methods to be adopted to find out the existences of unlawful assemblies, while at the same time safeguarding loyal people from police espionage.

"My Lord, the greatest social interest of India at the present day is internal peace and concord. While it is all very well to repress crime with a powerful hand, Your Excellency gladly acknowledges that along with this there must also be the accompanying policy of conciliation and the granting of those reforms which have been demanded by all the leaders of Indian thought who have the best interests of the country at heart. And I am persuaded that if the reforms to be announced next Monday are at all on the general scale—as I believe they will be—a new era will dawn on India of peace and progress, and a political climate will be developed, in which loyalty and goodwill will grow from more to more, and in which anarchy and sedition with their kindred disorders will have no room to live. Towards the bringing in of this happier state of things, it is to be hoped that all the races in our land—European, Hindu and Muhammadan alike—will conspire together in promoting the best interest of India along those paths which will lead to her exaltation amongst the nations in all that constitutes the qualities of a great people.

"My Lord, with these few observations I heartily support the measure before the Council, and earnestly trust, that as a latent power in the hands of the Government, the very knowledge of its existence will be such a terror to evil-doers, that its provisions will never require to be put into active operation."

The Hon'ble MAUNG-BAH-TOO said :—"My Lord. all that I have to say is that I think it my duty to support the Government of India in a measure which, after full consideration, they believe to be necessary in order to suppress anarchism. I will vote for the Bill."

The Hon'ble NAWAB BAHADUR KHAWAJA SALIMULLA OF DACCA said :—"With Your Excellency's permission I beg to say that it is a great pleasure to me to accord my warmest and most hearty support to the Bill introduced to-day by my friend and colleague Sir Harvey Adamson, to provide for the more speedy trial of certain offences and for the prohibition of associations dangerous to the public peace. Two years ago, in my budget speech, I had pleaded in strong terms, in Your Excellency's Council, for some such measures. I had deplored the fact of treason being openly preached in our towns and streets—the masses encouraged to kill, hurt, stone and assault Englishmen and loyally disposed Hindus and Muhammadans for no fault except their steadfast loyalty and unwillingness to countenance any movement against constituted authorities, and had also drawn attention to the fact of loaded pistols being found in the hands of children in the open streets of Calcutta. My Lord, it was for this reason I was anxious to put a question in the Council as to how far Government were cognizant of the miscreants who were doing the kind of mischief of setting class against class; but I was advised not to do so. My Lord, I may be permitted to quote the following from my speech, which runs thus :—'The loyally disposed Hindus and Muhammadans feel that Government must, with a strong hand, put down at once and *once for all* what is going on round about us before a serious conflagration takes place. My Lord, I know that I shall be taken as an alarmist, but, my Lord "'Tis the coming events that cast their shadows before," and I am prepared for all the contumely and odium that will be cast on me if I only succeed in inducing Government to pause in the course of putting unlimited confidence in the lip-loyal sayings and doings of these agitators, and allowing them a free hand so long as they keep outside of the pale of what is defined in the Penal Code as sedition and treason. For I feel with my people that the time has come when we can no longer remain quiet. I, however, openly declare that we do not want, as many Europeans are said to be doing, another mutiny, in order that the growing insolence of the *badmashes* and of these unscrupulous persons may receive their deserts. We only appeal to Government to put down with a firm hand every attempt made to sow the seeds of disaffection and to seduce the people from their faith and belief in your Excellency's Government.' These remarks, unfortunately, have been almost prophatic in their fulfilment. Had my humble suggestions been accepted by the Government two years ago, the revolutionary tide of anarchism, lawlessness and hooliganism, which has engulfed many a hearth and home in gloom and brought desolation and woe to many innocent persons, would have been at once stemmed. The extraordinary measure of creating a special tribunal which recent events have called forth is, in my humble opinion, yet insufficient and inadequate at the present juncture to meet the extraordinary necessities of the case. In the interests of good government, in the interests of public peace, progress and prosperity; in the interests of the youths of our country whose careers are blasted—enmeshed and entangled as they easily are in the snares of designing schemers and conspirators; in the interests of parents and guardians whose fondest hopes are shattered,—I venture to suggest that a stronger measure than that contemplated should be adopted to effectively eradicate this deep-rooted evil with its possible ramifications all over India, My Lord, public peace is disturbed. Dynamite, bombs, revolvers are in the air—the very weapons which, in all ages and in all countries, have been the handmaids, *not* of the restorers of their country's Liberty, but of the disturbers of their country's Tranquillity. The sympathy of our rulers and the good will of the British people, to which we all owe so much, are in danger of being estranged

from us. Do they not pause to think that the very Burke and Mill, and a host of others, by whom they adjure and whose doctrines they have so ill-grasped, belong to the same nation who have opened our eyes and placed before us the dazzling vision of Western liberty and freedom? But 'Liberty', says Mrs. Besant, 'is too holy and divine a goddess to descend upon a country whose people lack in self-control, discipline, order and purity of heart. Responsibility, sense of public duty, study of history and ways of the Free People and the virtues of self-control and self-abnegation are essentially necessary in a people aspiring for freedom.' In short, they should remember the old adage the first of all deserve and then desire. Providence never withholds its blessings from those who are really worthy. England never burst through her bondage in a single day. She required years—nay, centuries—of patient preparation in moulding her national character, in uplifting her commoners, in regenerating her nobles, before she attained her goal and before she could occupy the position she is occupying to-day. *Festina lente* is as true when Æsop wrote his Fables as it is to-day. And—

'Heaven is not reached at a single bound
But we build the ladder by which we rise,
From the lowly earth to the vaulted skies,
And we mount to a summit round by round.
Wings are for Angels but feet for men!
We may borrow the wings to find the way;
We may hope and resolve and aspire and pray,
But our feet must rise or we fall again.'

"At the present moment, however, when the whole country is being convulsed by a handful of mischief-makers, what is our duty to our King, to our country and ourselves? Are we to sit still with folded hands and remain passive spectators of what is going on, or are we in duty bound to bestair ourselves, in order to discountenance sedition and to assist the Government in its efforts to advance the welfare of our people and maintain the supremacy of law? We all know that the British Raj is built on too solid a foundation to quake at the flesh of the assassin's dagger, or the fiery vociference of the demagogue, or the scurrilous writings of the seditious publicist. This movement, if anything, forebodes a Reign of the Terrorist, and as such it is high time that we should devise stronger and more effective means and methods to counteract this evil which is a menace to peace and the true liberty of our country.

With these few words, my Lord, I support the Bill."

The Hon'ble MR. APCAR said:—"My Lord, on behalf of the Bengal Chamber of Commerce I cordially support this Bill. On referring to the joint letter from the Chamber, the Trades Association and the European and Anglo-Indian Defence Association, there were three points mentioned in it which, I am glad to see, have been introduced into this Bill and I assure you will meet with the greatest appreciation. The Hon'ble Mover has so thoroughly explained the objects of the Bill and the reasons which have necessitated it that I feel it is not necessary for me to dilate further on them. I accept what he has stated as facts, and I am sure the Bill will meet with the cordial approval and support of the commercial community."

The Hon'ble DR. RASHBEHARY GHOSE said:—"My lord, when the Executive have deliberately come to the conclusion that they should be invested with new powers to maintain law and order, it is, generally speaking, the duty of every member to support the Government; specially at a time like this, when they have to face a great and serious, though not a widespread, evil. I am, therefore, glad to be able to say that I can honestly vote in favour of the Bill. But there is one clause in it, and only one, which I have not been able to bring myself to accept. I mean the clause which gives the Executive power to suppress associations which they may deem to be unlawful.

"In proposing to take this power to-day the Government, I venture to think, are following a not very logical process. In denying the necessity for urgency when the Bill which afterwards became the Irish Criminal Law and Procedure Act of 1882, was before the House of Commons, the present Secretary of State for India said :—'The Government are going to work in an inverted order—they are beginning with a policy which will aggravate the existing evil and will weaken and spoil the operation of whatever future remedies they may be able to propose.'

"My Lord, the long-promised reforms are now in sight. We shall know them on Wednesday next, when I am confident they would be gladly welcomed by all His Majesty's subjects in India. Coercive legislation, in my humble judgment, should, if necessary, have followed, not preceded, conciliation. The resources of coercion are, we have been told, inexhaustible. So too, I submit, is the store of healing methods, which are not unfrequently more potent than coercion and to which, except under the gravest necessity, the Liberal Party in England have always trusted, even in a country in which conciliation does not always make much impression on the people. And this leads me to remark that the anxiety of the Government to pass this Bill in one sitting may not improbably create unnecessary alarm, not indeed in India but in England, where an ill-informed Press seems to be under the impression that something like a revolution is impending in this country, and that all law and order have ceased to exist.

"My Lord, we have heard a good deal of the panacea of a firm and resolute Government. But though it has not been a very brilliant success in another country, if I could persuade myself that India or any part of it was in the condition of Ireland not very long ago, I would have assurably given the Government my humble but steady and unflinching support and voted for the whole Bill with all my heart and soul. But I ask,—Is there any network of secret societies in this country ? Any association like the Irish Land League? Anything like the Reign of Terror, which hung as a dark and ominous cloud over Ireland? I would also ask,—Has the ordinary law been found inadequate to deal with disorder? The Irish Prevention of Crimes Act of 1882 opened with the preamble—'Whereas by reason of the action of secret societies and combination for illegal purposes in Ireland the operation of the ordinary law has become insufficient for the repression and prevention of crime.' This is nothing but the bare truth, for we all know that at that time Ireland was in a state of revolution and society—it is no exaggeration to say—was on the very verge of dissolution. In this country however, anarchism is only a passing distemper ; and it has yet to be shown that the operation of the ordinary law is insufficient for its repression and prevention.

"My Lord, no Irish Viceroy had to face greater difficulties than Lord Spencer, or was put to a severer trial; and yet he succeeded where Mr. Forster had failed because he possessed an inexhaustible store of that 'steady eyed patience' which we are told on very high authority, is essential in an Irish Viceroy. Your Lordship, if I may say so without impertinence, possesses in an equally large measure all these qualities which enabled Lord Spencer to restore law and order in Ireland without the help of stringent Coercion Acts. We know also that Your Lordship is not an admirer of resolute Government, and the country cannot be too grateful to you for the nerve and firmness which you have exhibited throughout these anxious days. It is, therefore, peculiarly painful to me to have to oppose any part of this Bill. The responsibility too, which I have ventured to take upon myself, is very, very great. But I owe it to myself, I owe it to Your Lordship, to whom I am indebted for my seat in this Council, I owe it to the party to which I belong—the educated classes as they are generally called—to speak out my mind.

"The educated classes, my Lord, have been taught and taught by their rulers, to whom they owe a debt they can never hope to repay, to regard Government even by the best Executive in the world with distrust. Sir Henry Maine, who according to

Lord Morley was too much of a bureaucrat alike by temperament and training, said many years ago : 'The educated youth of India certainly affect a dislike of many things which they do not care about and pretend to many tastes which they do not really share, but the repugnance which they invariably profess for discretionary Government has always seemed to me genuinely hearty and sincere.'

"My Lord, the educated classes have been long accustomed to sneers and taunts, gibes and calumnies, but I should have thought that they would at least be spared the insinuation that they are disloyal. What ! The educated classes disloyal ? They must be so many lunatics if they are really disloyal. Are hundreds of thousands of men to be branded as disloyal, merely because a few misguided persons, mostly boys, have been betrayed into silly treasonable practices ? We are not Pharises. We do not, my Lord, wear our loyalty on our sleeves, because our loyalty is, and ought to be, above all suspicion, because to doubt it is to doubt our sanity. I repeat, our loyalty ought to be, above all suspicion, for we know that the continuance of British rule is absolutely essential to our gradual growth as a nation. We cannot therefore, too strongly condemn anarchism or anything wearing even the appearance of treason, because it would tend to alienate our rulers from us. We condemn anarchism because it would retard all progress as it is a fatal delusion that concessions can be wrested from the people of England by violence. We condemn anarchism, because its spread would end in the dissolution of all that holds society together. And we condemn anarchism most, because it is opposed to the loss of God as well as of man. It is perhaps never safe in such cases to indulge in predictions, though I may say without boasting that some of my forecasts have proved only too true. But this I may assert without much rashness : that anarchism is bound to die out. It will not, I fear, be killed by Coercion Acts. But it will die, it is bound to die, because it is in opposition to the best traditions of our race—traditions which are much older than that gospel of love which was preached eighteen centuries ago—older even than the teachings of Goutama Buddha. Anarchism, I repeat, is bound to die, because it is in opposition to all those precepts of pity and of compassion for the meanest of sentient beings which are our great, our priceless heritage,—precepts which still guide and inspire the life of every true son of India and which will continue to guide and inspire it, till civilised man exchanges all the gentler, purer and higher qualities of humanity, for the tiger instincts of the savage."

The Hon'ble MR. ERLE RICHARDS said :—"I desire, my Lord, to make a few observations to this Council in supplement of the speech which my Hon'ble Colleague addressed to us at an earlier stage of these proceedings. There are legal points arising on this Bill on which, as legal adviser of the Government, I think it proper to offer explanations, and behind them there is a point of general policy on which, as one who has had the honor of being a member of Your Lordship's Council during the past few years, I have to make some remarks.

"And first as to the Bill itself. The main object of Part I is to set up a Special Tribunal in order to insure the more speedy trial of certain offences. It is essential in the interests of the public itself that offences against the State and crimes which from their nature cause widespread alarm among the public should be tried with promptitude. If the accused be guilty, punishment is robbed of its deterrent effect by delay ; if he be innocent, the protraction of the trial is a great hardship on him. Moreover, the presence of prisoners under trial for offences of this kind is of itself a source of disquiet and unrest among the public, and should not be permitted to continue longer than is necessary. If proof were needed of the delays which are involved in the present system I would refer the Council to the case which is at this moment under trial in the Sessions Court at Alipore. In that case proceedings were initiated before the Magistrate on the 18th of May ; the prisoners were committed for trial on the 16th of September ; the trial

is still proceeding before the Sessions Judge, and so far as can be judged from the public prints shows no signs of coming to an end ; and after it is over there can be an appeal to the High Court, which of itself must involve a lengthy hearing. And the Alipore case does not stand alone. There are unfortunately other conspiracies in existence as my Hon'ble Colleague has told us equally widespread. It is most necessary that there should be some speedier means of disposing of cases of this character. Under the present procedure in such cases as that at Alipore, there are practically three trials ; the first before the Magistrate, the second before the Sessions Judge, the third before the Court of Appeal. The Bill proposes that there shall be only one trial, that there shall be only such preliminary proceedings as are necessary to ensure that the charge is justified and that the Court which tries the case will have sufficient materials before it to enable it to appreciate the charge ; and the effect of the Bill is that there will be no appeal from the decision of that Court except such as may now exist on points of law. It follows from the fact that there is to be no appeal, that the Court must be constituted of Judges of the highest authority, and the proposal is that it should be formed of three Judges of the High Court appointed by the Chief Justice and sitting without a jury. The preliminary proceedings take the form of an enquiry by the Magistrate limited to ascertaining whether a *prima facie* case for the prosecution has been made out, a case sufficient to justify the putting of the accused on trial. The functions of the Magistrate will be analogous to that of the Grand Jury in England, which hears no witnesses for the defence, but confines its investigations to the question whether the evidence for the prosecution justifies a trial. The result of these provisions will be that there will be one trial, and one trial only, instead of three as in effect there may now be, but that the one trial will be held before a Tribunal of unimpeachable authority and impartiality. It has not been found possible in the Bill to define with exactness the offences which will be referred to the Special Tribunal, but I think I may fairly anticipate that no case which can be promptly disposed of by ordinary process will be taken away from the usual Tribunals unless special reasons exist for doing so. A short time since a prisoner was put on trial charged with attempting to murder the late Lieutenant-Governor of this Province. The facts were not disputed and the whole proceedings were concluded within some two or three weeks. I do not suppose that cases of that kind would ever be referred to the Special Tribunal, but when once it is attempted to draw a line between the cases which are to be referred and the cases which are not to be referred, then difficulties begin. I believe it to be impossible to frame a general definition which would satisfactorily accomplish the purposes of this legislation : it is better, as it seems to us, to limit generally the classes of offences as is done in the Bill and in the Schedule and to leave the responsibility with the Governor-General in Council of putting the procedure in the Bill into operation. I am aware, my Lord, that the result of this procedure may be in some cases to withdraw the right which a prisoner may have under the existing law to a trial by jury. That would not be so in the Alipore case, but in other cases the Bill might have that result. But I would point out that in effect the Tribunal is a jury of three Judges, and I believe it to be a form of jury which any innocent man would prefer. The responsibility of taking the case away from a jury will rest with the Government, and it must be left to them to decide ; they are amenable to public pressure, and if they use the power unjustly there will be opportunities of calling attention to it. My Hon'ble Colleague has explained the provisions as to the admission of evidence of witnesses who have been murdered, and I have little to add to what he has said. No doubt the admission of this evidence is an alteration of the law, but it is not without precedent in the legislation of the United Kingdom, and the experience of the last few months has shown us that some provision of this kind is necessary. It may be that if it were exercised to its fullest extent it would cause hardship in the case of innocent prisoners on their trial jointly with others but the weight to be attached to

the evidence is a matter for the Tribunal, and we may safely trust the Judges to see that no hardship is caused in that way.

" The second part of the Bill gives greater powers in regard to unlawful associations, and that is a matter more for the Department over which my Hon'ble Colleague presides than for myself ; but no one can have listened to the crushing indictment which he has presented here this morning without being convinced that these associations are a very serious disturbance to the public tranquillity even if they do not more directly organize crime. The powers taken by the Bill are aimed only at associations which constitute a danger to the public peace, and punishment under them can be inflicted only by the ordinary process of the Courts.

" I do not apprehend, my Lord, that the Bill will be successfully attacked, in the conditions of the present time, on the ground that it goes too far. There may be objection taken to particular provisions in it, but in regard to the objects of it, it will hardly be disputed that some legislation is called for. The necessity for some acceleration of the process of the law has been generally admitted : the necessity for putting a check on associations of the kind to which the Bill applies cannot be denied. I listened to the remarks of the Hon'ble Dr. Rashbehary Ghose in which he dealt with the necessity for this measure, and I could not help admiring, from a professional point of view, the skill with which he skated round the real point without ever brushing against it. The provision for special procedure he did not dissent from, and as to the associations he did not contest but they are a very real danger to the public peace. This is the real point and he did not tackle it ; if they are dangerous then the necessity for legislation is established. So far from the Bill going too far, I should rather anticipate the objection that the proposals do not go far enough ; and that it will be said in view of the facts which my Hon'ble Colleague and the Hon'ble the Nawab of Dacca have put before us this morning, that the time has come for more drastic remedies. It is on that point that I desire to make some observations.

" My Lord, the Government of India have not hesitated to take vigorous action on former occasions both by the exercise of the powers which are at their disposal under the existing law and by asking this Council for special powers to deal with special developments. The Punjab was quieted by action taken under existing powers : the disturbing utterances of extremist newspapers have been checked by prosecutions under the ordinary law. Seditious meetings, at one time a source of grave distrubance to the public peace, have been held but infrequently since this Council passed special legislation to deal with them ; the Newspaper Act has given powers of confiscating printing presses, powers which have already been used with effect ; the Explosive Substances Act was enacted within a few weeks of the first bomb outrages. The Government of India cannot therefore be accused of inaction ; they have shown themselves prompt in every case to deal with evils as they arose. But the pervading note of Your Lordship's policy has hitherto been to refrain from anything like a general suspension of the ordinary law and to rely on the people of India to put an end to the bad feeling from which sedition springs by their own influence. We have removed malignant growths, as they have been discovered, by operations of surgery, but we have trusted the people of India to apply that medicinal treatment which can alone prevent the recurrence of those growths. It is said that the time has now come for abandoning that policy and for embarking on repressive legislation. Beyond doubt repression can be made effective, and beyond doubt it will be made effective, if it is forced upon us. It should not be lightly undertaken since it cannot avoid the infliction of hardship on the innocent as well as on the guilty ; it cannot but involve the disturbance of the whole community. But if other measures fail to maintain peace, then no alternative remains. The question before us is whether the situation to-day is such as to force upon us this change of policy.

"There is admittedly a new factor to be taken into account. It is the existence of a band of anarchists whose object is to render the enforcement of law impossible, whose methods are assassination and intimidation. A movement such as this, my Lord, is not a danger to the British Raj; that cannot be shaken by the murders of individuals, nor will any of those who have the honour of serving the King-Emperor be deflected a hair's-breadth from the path of duty by fears or threats. But it is a danger, and a grave one, not to the British Raj, but to the Indian community itself. Once let anarchy spread its evil roots over the country and it becomes a growth which cannot easily be checked: and if that ever comes to pass, there will be no one of whatever class or creed in the community who will not be at the mercy of an assassin to satisfy a grudge or gratify an enmity. That, my Lord, is the real danger we have to fear, and it is a danger which must be put an end to at once and completely. That it can be ended is beyond doubt; that it will be ended is as certain as that day follows night. The resources of legislation are not exhausted by this Bill; the resources of force have not yet been brought into play. The question is one only of the means by which it may best be effected.

"My Lord, if these conspirators represented the bulk of the Indian community of Bengal, if they in any way had behind them the public opinion of these Provinces, then indeed the case for strong repressive legislation would be unanswerable. But the Government of India do not believe that this is the present state of things. They believe that these crimes are as abhorrent to the better classes of the Indian community in these Provinces as they are to every other civilised human being. It is impossible for us to think that the Indian gentlemen of these Provinces, many of whom we are privileged to number among our personal friends give countenance in any sort of way to these deeds of shame; and we believe that crimes of this kind are equally detestable to the Bengali race as a whole. But the evil has come about because the real opinion of the public has not been declared. An outside observer looking at the events of the past few years might well have inferred that there were no moderate, reasonable men in Bengal: that the nation looked for its guidance to platform agitators: that the politics of the country were dictated by College students. We all know that this inference would be altogether false. The real power lies with the men of position and substance and with the men of the middle classes who form the backbone of every nation: these are the men who can guide public opinion if they will do so, and with them the present issue lies. The intentions of the vast majority are, as we believe, wholly loyal to the King-Emperor, and we have heard that affirmed in eloquent terms to-day by the Hon'ble Dr. Rashbehary Ghose, It is true that many of them desire some further measure of self-government: that is a reasonable desire and it is one with which all of us sympathise within certain limits. But they have no desire to render the British Raj impossible or to subvert the constitution of the country. And their interests must be wholly on the side of order. They must know that deeds of anarchy can only defer instead of quickening further grants of self-government; they must know that men who cannot control their own sons cannot justly claim to govern other people; they must know that the departure of the British Raj would inevitably be followed by civil war with all its attendant horrors, bloodshed and rapine. Therefore their interests must be as firmly on the side of loyalty as we believe their wills to be.

"It is because the Government are confident that this movement finds no support in the general public opinion of these Provinces that a more drastic Bill has not been introduced to-day. And it is for the same reason, if I read aright, that it has been determined that these outbreaks of lawlessness shall not interfere with those proposals for further self-government which Your Excellency initiated some two years ago and which will be shortly made known to the public. If I may judge from the declared intentions of Your Lordship and from the public utterances of His Majesty's Secretary

of State, the concessions that are to be made will be of a liberal character; they will be a real step in advance towards the greater control by Indians of the administration of this country.

"These, my Lord, are the reasons by which the policy of Your Lordship's Government have been guided on the present occasion, but they are reasons based on the anticipation, which the Government confidently entertain, that the present state of things will pass away. If there be no improvement then those reasons will lose their force. We stand to-day at the parting of two ways. One road leads to greater self-government under the direction and guidance of the British Raj; it is the way of peace, of law and of order. The second road can only lead to repression and ultimately to the reign of force, it is a way on which the ordinary law is suspended. It is for the Indian community, and primarily for the Indian community of these two Provinces of Bengal, to decide which road we shall travel. The Government of India, and those who know Indians as we do, believe, and confidently believe, that they will choose the first of these two roads and that events will justify the trust which your Lordship has placed in them and the policy which you have pursued. But it lies with them to choose. The time has come for the leaders of the Bengali nation, for the men of influence and of substance in the Indian community, to take the reins into their own hands and to guide the coach of State along the right road. Let them no longer shrink from the responsibility: it is their duty to their nation, to the world and their King-Emperor to use their power and to use it promptly. My Lord, I invite this Council to vote in favour of the motion which is before it."

His Honour THE LIEUTENANT-GOVERNOR said:—"My Lord, I understand that the measure which is now offered for consideration is the outcome of representations which have been submitted by the Local Governments of the two Provinces to which it is to be applied in the first instance and of deliberations to which Sir Andrew Fraser was a party. In any event I am well aware that Sir Andrew Fraser was absolutely convinced of the necessity for strengthening the law on some such lines as these.

"I desire to say, in the most public manner, and in the most emphatic words at my disposal, that I am wholly in agreement with him. I have recently spent some three or four months on leave in England, and during that period I have had occasion to discuss the present situation in India with many persons, including not a few who have no direct or personal connection with this country. In all these conversations one feeling was uppermost and conspicuous; those with whom I spoke almost invariably expressed amazement at the inordinate delay which has hithereto occurred in the determination of State trials such as that now pending at Alipore; and they have dwelt on the paramount necessity of bringing them to a conclusion and punishing the guilty with the utmost possible promptitude. It was idle to reply that under the present law such delays are unavoidable, or to point out that the law, framed with reference to normal conditions, contemplates no less than four separate proceedings, *viz.*, (1) the police enquiry, (2) the enquiry before the committing Magistrate, (3) the trial at the sessions and (4) the eventual appeal to the High Court. People invariably rejoined that if the law involves such procrastination the law is inappropriate to present circumstances and should be altered.

"I entertain no doubt that an amendment of the law is urgently necessary. When proceedings in a State trial are inordinately protracted, as they must frequently be under the present procedure, the effect upon public feeling is deplorable; for the sense of shock and shame originally felt at the enormity of the crime fades away in weariness and disgust, long before slow-footed and uncertain punishment has overtaken the offender. The first part of the present Bill deals with this evil in a manner which fairly claims the adhesion and assent of all reasonable men. No stronger, swifter, or more impartial tribunal in all India can be found than a bench of three Judges of the High

Court: that it is costly may be admitted, but I venture to think that its cost will be repaid many times over in the public confidence which will attach to its proceedings.

"The second part of the Bill contains the provisions by which it is sought to reach and extirpate those secret societies which are a significant feature of the revolutionary movement and which have done so much evil during the last three years. I will frankly admit that I do not feel the same confidence in regard to these new substantive provisions as I have expressed in regard to the special tribunal of the High Court. Dr. Ghose says that the picture drawn of those societies is over-charged. I regret that I hold a very different view. The evidence before me shows that in a number of districts these associations have done and are now doing an enormous amount of mischief. At their best they provide a ready organization for inoculating immature students with the poison of politics, for the dissemination of sedition, and for the terrorising, by methods to which the Hindu social system readily lends itself, of persons who hold unpopular views. At their worst they are active underground agencies for the perpetration of violence and outrage, of dacoity, and of murder. I regard these associations as among the most dangerous as well as the most elusive of the enemies with whom we have to deal. I am unable to feel any strong assurance that the powers with which we are now arming ourselves will suffice to extirpate them as swiftly and certainly as I should desire. I am, however, prepared to give them a fair trial in Bengal. I shall administer them as vigorously as I may; and if they should be found inadequate I shall not hesitate to apply to Your Excellency to be armed with sharper and less cumbrous weapons.

"It is a matter of much concern to me that my first public pronouncement since assuming charge of my present office, should be in relation to a measure of this character, which I can but admit reflects no credit on the good name of the Province to which I belong and to which I am sincerely attached. And this must be my excuse if in this connection I say one word of hope—a hope which I venture to think that Your Excellency will share. It is our duty to stamp out sternly the sparks of incipient anarchy and disorder, and this we seek to do by the Bill which is now before us. But this measure does not represent the whole or even the major part of the policy of Your Excellency's Government in dealing with the present situation. Our greater task is so to adjust the machinery of Government that our Indian fellow-subjects shall be allotted a part which a self-respecting people can fill. And when the constitutional reforms which have been under Your Excellency's consideration are finally announced, as they shortly will be, I hope and believe that this task will be on the road to accomplishment."

The Hon'ble SIR HARVEY ADAMSON said:—"I am sure that Your Excellency and my Hon'ble Colleagues will join with me in regarding it as a matter for much gratification that this Bill has received so strong a measure of support from the non-official members of the Legislative Council. Nothing could more strongly demonstrate that the sense of the country is with us, that the public mind has revolted against the attempts that have been so assiduously made to plunge the country into disorder, and that all loyal men are convinced that it is the duty of Government to assume such powers as are necessary in order to stamp out anarchy.

"It has been suggested that the Bill would be more acceptable to the public if a provision were inserted limiting its operation to a stated period. We have considered this point and come to the conclusion that it is better to enact the Bill as a permanent measure. If, happily, conditions improve so as to make it apparent that its provisions are no longer wanted, it will be easy to repeal it. But the spirit of anarchy, when it once takes root in a country, is not easily or quickly eradicated, and I confess that I cannot with confidence look forward to a time, one or two years hence, when provisions

of the nature of those contained in this Bill will have permanently become unnecessary. For these reasons we have thought it best to refrain from limiting the operation of the Bill to any stated period.

"The only provision to which my Hon'ble friend Dr. Rashbehary Ghose has taken exception is the clause which gives power to the Government to declare an association unlawful when it is satisfied that it interferes with the administration of law or the maintenance of order, or that it constitutes a danger to the public peace. Now this is in my opinion a very salutary provision, and I may add that it is a very merciful provision. Its object is preventive. It is intended to save from the penalties of prosecution a great number of the young and thoughtless who have been induced to join these associations, probably knowing little of their criminal objects. I have already referred to the success which has followed the legislative measures which we sometime ago adopted. That success is due in much greater measure to prevention than to punishment. I have confidence that similar success will accompany this preventive measure, and surely, if what must be done can be done by prevention instead of by punishment, it is better to employ the less severe method.

"Objection has been taken to the hurried manner in which the Bill is being passed through the Legislative Council. I fully admit that Hon'ble Members have some reason to complain. The Bill has, however, been in the hands of Hon'ble Members for thirty-six hours. I wish that it could have been possible to give a longer time for their deliberations. But we reluctantly came to the conclusion that this is a matter in which the convenience of Hon'ble Members must be subordinated to expediency. In the present excited condition of public feeling, it is imperative that if a measure of this kind is to be enacted, it must be enacted quickly.

"In conclusion I must say that my task in taking charge of this Bill is a painful one. I am sure that my Hon'ble Colleagues will share with me the intense reluctance I entertain to perform this duty. But I never was more clear in my life as to the necessity of what we are doing. Some persons may say that we have waited a long time before fulfilling this duty, but after all there does require to be shown the existence of an extreme evil, unmistakable as to its extent, before legislation of this nature can be initiated. I may be permitted to express the great consolation I have in knowing that during the past year we have also been engaged in a duty of a more congenial kind, and I hope that in the statement which Lord Morley will make in a day or two, it will be seen that if the Government of India have been strong in repressing crimes, they have also been generous in granting reforms."

The motion was put and agreed to.

The Hon'ble DR. RASHBEHARY GHOSE moved that in clause 17, sub-clause (1), of the Bill, after the word "Whoever" the word "knowingly" be inserted. He said:—

"That clause now runs thus:

'Whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contributions for the purpose of any such association, or in any way assists the operations of any such association, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.'

"It is one of the elementary principles of criminal law, it is also common sense, that a guilty mind in an essential element in constituting a crime. This well known principle is recognised in section 9 of the Act of 1882 [Prevention of Crimes Act (Ireland)], which says:—

'Every person who knowingly is a member of an unlawful association as defined by this Act, or takes part in the operations of an unlawful association as defined by this Act, or of any meeting thereof, shall be guilty of an offence against this Act.'

"Similarly, the Criminal Law and Procedure (Ireland) Act of 1887, section 7, says—I am going to read only the relevant parts and not the whole of it :—

'Every person calling together a meeting of such association in the specified district, or of any members thereof as such members, or knowingly taking part in any such meeting or publishing with a view to promoting the objects of such association.'

"I do not think it is the intention of the Government to make this Act more stringent than the Irish Acts of 1882 and 1887. They were both very drastic measures and I was under the impression that it was impossible to improve upon them: but I see that the draftsman has been able to achieve that feat, because, as the Bill now stands, a man, however innocent of any guilty knowledge or intention, may be sent to prison for six months under this law."

The Hon'ble SIR HARVEY ADAMSON said:—"I regret that I cannot accept this amendment. It would mean that it would be the duty of the prosecution to prove that the person who is accused of taking part in the operations or contributing to the funds of an unlawful association knows that the association is unlawful. Now this is a fact which in almost every case it would be impossible for the prosecution to prove. The clause would be ineffective if the burden of proof on this point did not rest with the accused. A person who takes part in the operations of, or contributes to, an unlawful association, in ignorance that it is unlawful, is protected by section 79 of the Indian Penal Code, which provides that nothing is an offence which is done by any person who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law in doing it. But in this as in the rest of the general exceptions under the Indian Penal Code the burden of proof rests on the accused, and to alter this provision in the manner proposed would be simply to render the penal clause quite inoperative. For these reasons I regret that I cannot accept the amendment."

The Hon'ble DR. RASHBEHARY GHOSE said:—"I would like to point out that although the word 'knowingly' occurs in both the Irish Acts, the Government did not find that the Acts were inoperative. Mr. Balfour certainly did not find it so in 1887."

The motion was put and negatived.

The Hon'ble DR. RASHBEHARY GHOSE moved that in clause 17, sub-clause (1), of the Bill, before the word "contributes" the word "knowingly" be added. He said: "It may be that a member of an unlawful association cannot take part in a meeting of such association without knowing the true character of the association. But can you say the same thing of a person who merely pays a subscription say to a cricket club the members of which may be secretly engaged in promoting crime? I submit this a very modest amendment to which no reasonable exception can be taken.

The Hon'ble SIR HARVEY ADAMSON said:—"My answer is the same in this as in the previous amendment that was proposed. If a person is accused of contributing to the funds of an unlawful association and has contributed in ignorance that the association was unlawful, he has only to prove that to the Court, and under the provisions of the Indian Penal Code, which I have just read, he will be exempt from punishment. The objection to the amendment now proposed is just as strong as to the amendment last proposed. I regret therefore that I am unable to accept it."

The motion was put and negatived.

The Hon'ble SIR HARVEY ADAMSON moved that the Bill be passed.

His Excellency THE PRESIDENT said:—"My Hon'ble Colleague, Sir Harvey Adamson, has described so fully the chain of incidents which have led up to the present position that there is no need for me to recapitulate them. We should, however, bear in mind the true interpretation of the story he has told us. We should remember that

for years the vapouring of a seditious Press have been disseminating the seeds which are now bearing fruit, and that following in the wake of inflammatory newspaper articles we have had the speeches of revolutionary agitators, and the consequent deplorable misguidance of the youth of the country culminating in the commission of senseless outrages and brutal crimes.

"No one has hoped more sincerely than I have that the existing laws of the land might have proved sufficient to deal with the difficulties which have surrounded us; but it has not been so, and the exceptional legislation we have already passed, though productive of good results, was not framed to meet the danger which now confronts us. The Maniktolla Garden discoveries, followed by the attempt on the life of Sir Andrew Fraser, and the murder of the Police Inspector, have opened a new chapter in the history of sedition. They have taken us far beyond treasonable pamphlets and revolutionary speeches, they have shown us the results of those preachings and are laying bare before us the workings of a murderous conspiracy—a widespread conspiracy—recruited from the ranks of emotional young men saturated with grotesque ideas of political freedom. Horrible as it all is, I confess to some feeling of commiseration for these infatuated boys—for many of them are little more than that—blindly ruining their own future and the happiness of their home surroundings.

"But there it is. The Government of India have this conspiracy to deal with. We know its acknowledged aims, the systematic assassination of Government officials which is to discredit our administration, and expel the British *Raj* from India, and notwithstanding the wicked absurdity of such schemes, we cannot disregard the fact that personal and public security are dangerously threatened, and that we are imperatively called upon to protect the public safety, and to subdue the indications of an increasing lawlessness.

"My Hon'ble Calleague, Dr. Rashbehary Ghose, has taken exception to certain clauses in the Bill and to our procedure in attempting to pass it in a single sitting. I am always very ready to treat the opinion of my Hon'ble Colleague with respect; indeed, I look to his sage advice and to his influence with his fellow-countrymen to assist us largely in the solution of the political problems of the future. But when I am told that the position is not one of such emergency as to justify a departure from recognized routine in the introduction of new legislation, and that further opportunity should be given for constitutional discussion, and for the expressions of public opinion, I must refuse to agree. Public opinion, European and Indian, has spoken out freely from every part of the country, and has officially and privately declared to me that the existing insecurity can no longer be tolerated, and that the Government of India must be more efficiently armed. With that opinion I am in entire accord. This is not a time to ponder further over the details of legislative machinery. There is nothing to justify a demand for further deliberations as to the action which the Government of India is now called upon to take.

"There are other reasons, too, for which I have been anxious that the Bill which we are about to pass should immediately become law. We are on the eve of the announcement by the Secretary of State of reforms which have long been foreshadowed, and I should be sorry to see that announcement immediately followed by exceptional criminal legislation such as that with which we have to-day been dealing. I cannot agree with my Hon'ble Colleague, Dr. Ghose, that we should first promulgate our reforms, and then proceed to deal with anarchical crime. I should prefer to feel that the stern measures which the unfortunate necessities of the moment have forced upon us have been completed before any announcement of reforms is made and that, having done our best for the maintenance of law and order, we can proceed with a free hand to discuss the development of the future. The success of that future must be based not

only upon the united efforts and co-operation of British and Indian administrators, but on the good sense of the Indian community. Upon its active assistance at the present moment much depends; and I would earnestly ask the members of every race, of every caste and of every creed to unite in one common effort to put an end to the dark plots and apprehensions of hidden danger which are crippling the daily life of the people. I would ask them to assist the Government of India in removing the causes which have so unfortunately necessitated to-day's legislation."

The motion was put and agreed to.

CALCUTTA,
The 11th December, 1908.

J M. MACPHERSON,
Secy. to the Govt. of India, Legislative Dept.

THE CRIMINAL LAW AMENDMENT ACT, 1908.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this volume and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S in Brevier denotes the section.

A

Act, Criminal Law Amendment—Necessity for passing—Object at which the Act aims, *A*, **3**.

Means provided by the Crim. Pro. Code for bringing anarchical crimes to trial—Conditions necessitating present legislation, (Act XIV of 1908), *D*, **3**, **4**.

Criminal Law Amendment—Necessity for its continuance in Statute book, *E—U*, **4**, **5**.

Criminal Law Amendment—Short tile and extent, S. 1, **6**.

Criminal Law Amendment, extended to various parts, *V*, **6**.

Application of Part I of Criminal Law Amendment, S. 2, **6**, **7**.

Scope of Part I of Criminal Law Amendment, *W*, **7**.

Criminal Law Amendment, scope of Part II of, *F*, **15**.

effect of the provisions of, *G*, **16**.

nature of the provisions of, *H*, **16**.

Criminal Law Amendment—Proceedings of the Council, p. 17—to the end.

Accused person, When, to be discharged, S. 5, **7**, **8**.

Power to send, for trial, S. 6, **8**.

High Court's power to grant bail to, tried under the Act, *C—I*, **10**.

Association, definition, S. 15, **15**, **16**.

Power to declare, un-lawful, S. 16, **16**.

when deemed to continue, S. 18, **17**.

continuance of, S. 18, **17**.

B

Bail, High Court's power to grant bail to accused tried under the Act—Cr. P. C. 1898, Ss. 498, 497—Exercise of discretion—Cognizance, taking, what amount to, *C—I*, **10**.

when bail cannot be granted, S. 12, **9—13**.

Law relating to the granting of bail, to accused persons tried under the Act, *J—R*, **10—13**.

Sessions Judge's power to grant—Sessions Court superior to District Magistrate—District Magistrate's duty to send to Sessions Judges when called for, *T—Z*, *A—D*, **14**, **15**.

Barristers, Right of exclusive audience—Special tribunal, *Y*, **9**.

Bill, Criminal Law Amendment, nature of, *B*, *C*, **3**.

scope of Part II of Criminal Law Amendment, *I*, **16**.

C

Charge, under S. 6—Joinder of charges, S. 7, **8.**

to be forward to High Court, S. 8, **8.**

Court of Session, No function to discharge, *X*, **8.**

Crim. Pro. Code (1898), Means provided by, for bringing anarchical crimes to trial—Conditions necessitating Act XIV of 1908, *D*, **3**, **4.**

Provisions of, not applying to proceedings taken under Part I of the Act, if inconsistent with the Act, S. 14, **13—15.**

S. 497—Bail, S. 12, **9- 13.**

Ss. 497, 498—High Court's power to grant bail to accused tried under the Act, *C—I*, **10.**

D

Definition, of association, S. 15, **15**, **16.**

of un-lawful association, S. 15, **15**, **16.**

District Magistrates, Bail—Sessions Court superior to Dt. Magistrate—District Magistrate's duty to send to Sessions Judge when called for, *T—Z*, *A—D*, **14—15.**

E

Enquiry, By Magistrate on receipt of order under S 2 of the Act, S. 3, **7.**

to be *ex parte*, S. 4, **7.**

Evidence, Special rule of, S. 13, **13.**

Evidence Act, S. 33, special rule of evidence, inspite of, S. 13, **13.**

Extent, Places where Criminal Law Amendment Act is in force, S. 1, **6.**

G

Governor-General-in-Council, Power to declare association unlawful, S. 16, **16.**

H

High Court, Persons sent for trial to, under the Act—Procedure, S. 11, **9.**

Power of, to grant bail, to accused tried under the Act, *C—I*, **10.**

J

Jury, Persons sent for trial to High Court—Trial without Jury, S. 11, *Z*, *A*, *B*, **15.**

O

Offence, for which an accused can be tried, See Sch. 17.

P

Penalties, for being a member of an unlawful association, S. 17, **16**, **17.**

Procedure, Enquiry by Magistrate, S. 3, **7.**

Enquiry to be *ex parte*, S. 4, **7.**

Power to send accused for trial, S. 6, **8.**

When accused person to be discharged, S. 3, **7**, **8.**

Joinder of charges, S. 7, **8.**

Charge etc., to be forwarded to High Court, S. 8, **8.**

Power to summon supplementary witnesses, S. 9, **8.**

Accused's right to give list of witnesses for defence before trial, S. 10, **9.**

In High Court, when persons are sent for trial under the Act, S. 11, **9.**

Procedure—(Concluded).

Trial without jury—Necessity, *Z*, *A*, *B*, **9**.

Person remanded to custody in the course of proceedings under the Act—Bail cannot be granted when, S. 12, **9—13**.

Special rule of evidence, S. 13, **13**.

Cr. P.C., not applying to proceedings taken under Part I of the Act if inconsistent, S. 14, **13—15**.

Special—Part I, Act XIV of 1908, **6—15**.

Proceedings of the Council, For, regarding Criminal Law Amendment Act, see p. 17 to the end.

S

Special tribunal, Barristers—Vakils—Right of exclusive audience, *Y*, **9**.

Sessions Judge, Power of, to grant bail—Sessions Court superior to District Magistrate —District Magistrate's duty to send to Sessions Judge when called for, *T—Z*, *A—D*, **14**, **15**.

T

Trial, Enquiry by Magistrate, S. 3, **7**.

Enquiry to be *ex parte*, S. 4, **7**.

when accused person to be discharged, S. 5, **7**, **8**.

Power to send accused for, S. 6, **8**.

Power to summon supplementary witnesses, S. 9, **8**.

Accused may, before trial, give list of witnesses for defence, S. 10, **9**.

Procedure in High Court, S. 11, **9**.

without Jury, *Z*, *A*, *B*, **9**.

U

Unlawful associations, Ss. 15 to 18, **15**, **17**.

Definition, S. 15, **15**, **16**.

Scope of Part II of Act XIV of 1908, *F*, **15**.

Effect to the provisions of Part II of Act XIV of 1908, *G*, **15**, **16**.

Nature of the provisions in Part II of Act XIV of 1908, *X*, **16**.

Penalties for being member of, S. 17, **16**, **17**.

W

Witnesses, Power to summon supplementary, S. 9, **8**.

for defence—list by accused, S. 10, **9**.

Words and Phrases, Association—meaning, S. 15, **15**, **16**.

Unlawful association—meaning, S. 15, **15**, **16**.

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THE PRESS AND REGISTRATION OF BOOKS ACT, 1867.

TABLE OF CASES NOTED IN THIS ACT.

		PAGE
	I. L. R. Bombay Series.	
14 B 586	Munshi Shaik Abdurruhman v. Mirza Mahomed Shirazi	7
19 B 557	Macmillan v. Khan Bahadur Shamsul Ulma M. Zaka	7
22 B 152	Queen-Empress v. Ramchandra Narayan	13
	I. L. R. Calcutta Series.	
23 C 414 (415)	Queen-Empress v. Banka Patni	10, 19
35 C 141	Apurba Krishna Bose v. Emperor	15
35 C 945 (953)	Emperor v. Phanendra Nath Mitter	14, 15
	I. L. R. Madras Series.	
9 M 387 (390)	Ramasami v. Lokanada	6, 13, 15
16 M 443 (445)	Queen-Empress v. Hari Shenoy	9, 12, 19
32 M 338	Gadicherla Hari Sarvothama Rao v. King Emperor	6, 15
	Allahabad Weekly Notes.	
A W N (1887), 95	Empress v. Joti Prasad	9, 20
	Bombay Law Reporter.	
12 Bom L R 675	Emperor v. Shankar Shrikrishna Dev	12
	Calcutta Law Journal.	
1 C L J 278	Ismail Bin Sheikh Badal v. Allibhai Sarafali	23
7 C L J 49	Apurba Krishna Bose v. Emperor	15
	Calcutta Weekly Notes.	
9 C W N 591	Ismail *Bin* Sheikh Badal v. Allibhai Sarafali	23
	Madras Law Journal.	
3 M L J 201	Queen-Empress v. Hari Shenoy	9, 12, 19
	Madras Law Times.	
2 M L T 500	Apurba Krishna Bose v. Emperor	15
5 M L T 415	Gadicherla Hari Sarvothama Rao v. King-Emperor.	6, 15
	Weir's Criminal Rulings.	
1 Weir 576	Ramasami v. Lokanada	6, 13
1 Weir 862	Queen-Empress v. Hari Shenoy	9, 12, 19
	Punjab Record.	
9 P R 1889	Bawa Narain Singh v. Empress	10
1 P R 1905 (Cr)	Ram Nath v. King Emperor	14, 15
5 P R 1909 (Cr)	The Crown v. Bhawani Das	8, 9, 10
	Punjab Law Reporter.	
69 P L R 1905	Ram Nath v. King Emperor	14, 15

Punjab Weekly Reporter.

		PAGE
15 P W R 1909 (Cr).	The Crown v. Bhawani Das ...	8, 9, 10

Indian Cases.

2 Ind Cas 193 (196).	Gadicherla Hari Sarvothama Rao v. King-Emperor.	6, 15
2 Ind Cas 978 ...	The Crown v. Bhawani Das ...	8, 9, 10

Criminal Law Journal.

2 Cr L J 31 ...	Ram Nath v. King-Emperor ...	14, 15
7 Cr L J 10 ...	Apurba Krishna Bose v. Emperor ...	15
9 Cr L J 506 ...	Gadicherla Hari Sarvothama Rao v. King-Emperor.	6, 15
10 Cr L J 195 ...	The Crown v. Bhawani Das ...	8, 9, 10

THE PRESS AND REGISTRATION OF BOOKS ACT, 1867.

(ACT XXV OF 1867.)

CONTENTS.

PREAMBLE.

PART I.

PRELIMINARY.

SECTIONS.

1. Interpretation-clause.
2. [*Repealed.*]

PART II.

OF PRINTING-PRESSES AND NEWSPAPERS.

3. Particulars to be printed on books and papers.
4. Keeper of printing-press to make declaration.
5. Rules as to publication of printed periodicals containing public news.
6. Authentication of declaration.
   Deposit.
   Inspection and supply of copies.
7. Office copy of declaration to be *prima facie* evidence.
8. New declaration by persons who have signed declaration and subsequently ceased to be printers or publishers.
   Authentication and filing.
   Inspection and supply of copies.
   Putting copy in evidence.

PART III.

DELIVERY OF BOOKS.

9. Copies of books printed after commencement of Act to be delivered gratis to Government.
10. Receipt for copies delivered under section 9.
11. Disposal of copies delivered under section 9.

PART IV.

PENALTIES.

12. Penalty for printing contrary to rule in section 3.
13. Penalty for keeping press without making declaration required by section 4.

SECTIONS.

14. Punishment for making false statement.
15. Penalty for printing or publishing periodicals without conforming to rules.
16. Penalty for not delivering books or not supplying printer with maps.
17. Recovery of forfeitures and disposal thereof and of fines.

PART V.

REGISTRATION OF BOOKS.

18. Registration of memoranda of books.
Effect of registration.
Act XX of 1847 applied.
19. Publication of memoranda registered.

PART VI.

MISCELLANEOUS.

20. Power to make rules.
Publication.
21. Power to exclude any class of books from operation of Act.
22. [*Repealed.*]
23. [*Repealed.*]

THE PRESS AND REGISTRATION OF BOOKS ACT, 1867

(ACT XXV OF 1867) [1].

[*22nd March, 1867.*]

An Act for the regulation of Printing-presses and Newspapers, for the preservation of copies of books printed in British India, and for the registration of such books.

Preamble 2.

WHEREAS it is expedient to provide for the regulation of printing-presses and of periodicals containing news, for the preservation of.....copies of every book printed or lithographed in British India, and for the registration of such books; It is hereby enacted as follows:

(Notes).

1.—"Act XXV of 1867."

(1) **Statement of objects and reasons.**

For——*see* Gazettte of India, 1867, p. 191. **A**

(2) **Proceedings in Council.**

For——*see* Gazette of India, 1867, supplement pp. 72, 156, 299. **B**

(3) **Scope of the Act—Places where the Act has been declared to be in force.**

This Act was declared, by the Laws Local Extent Act, 1874 (15 of 1874), S. 3, to be in force in the whole of British India, except as regards the scheduled Districts.

It has been applied to the Santhal Parganas by the Santhal Parganas Settlement Regulation (3 of 1872), S. 3, as amended by the Santhal Parganas Justice and Laws Regulation, 1899 (3 of 1899), Bengal Code, Vol. I; and to Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898), S. 4 (1) and Sch. I, Burma Code, p. 260.

It has been applied, by notification under S. 3 (*a*) of the scheduled Districts Act, 1874 (14 of 1874), to the following scheduled Districts, namely:—

the Province of Sindh, *see* Gazette of India, 1880, Pt. I, p. 672;

Aden, *see* Gazette of India, 1879, Pt. I, p. 434;

the Territory of Peint. *see* Gazette of India, 1887, Pt. I, p. 144;

[Peint is now no longer a scheduled District; and all the enactments in force in the Nasik District of the Bombay Presidency, among them Act 25 of 1867 are now in force in this territory, see the Peint Laws Act, 1894 (Bom. Act, 2 of 1894); Bom. Code, Vol. III].

the Island of Perim, see Gazette of India, 1887, Pt. I. p. 5;

that portion of the Jalpaiguri District which was formerly the Jalpaiguri Sub-division and now forms the western portion of the District of Jalpaiguri and extends as far east as the Teesta River, the hills west

1.—"Act XXV of 1867"—(Concluded).

of the Teesta River in the District of Darjiling, the Darjiling Tarai, the Damson Sub-division of the Darjiling District, the Districts of Hazaribagh, Lohardaga [now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. I, p. 44] and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singbhum, *see* Gazette of India, 1881, Pt. I, pp. 74 and 504 ;

the Districts of Kumaon and Garhwol, *see* Gazette of India, 1876, Pt. I, p. 605 ;

the scheduled portion of the Mirzapur District, *see* Gazette of India, 1879, Pt. I, p. 383 ;

Pargana Jaunsar Bawar in the Dehra Dun District, *see* Gazette of India, 1879, Pt. I, p. 382 ;

the Districts of Hazara, Peshawar, Kohat, Bannu, Dera Ismail Khan and Dera Ghazi Khan, *see* Gazette of India, 1886, Pt. I, p. 48 ; portions of the Districts of Hazara, Bannu, Dera Ismail Khan, and Dera Ghazi Khan and the Districts of Peshawar and Kohat now form part of the North West Frontier Province, *see* Gazette of India, 1901, Pt. I, p. 857 and 1902, Pt. I, p. 575 ; but its application to that part of the Hazara District known as Upper Tarawal is barred by the Hazara [Upper Tanawal Regulation 1900 (2 of 1900) Punj & N.W. Code] ;

the Districts of Kamrup, Nowgong, Darrang, Sibsagar, Lakhimpur, Goalpara (excluding the Eastern Duars) and Cachar (excluding the North Cachar Hills), *see* Gazette of India, 1878, Pt. I, p. 533 ;

the Garo Hills, the Khasi and Jaintia Hills, the Naga Hills, the North Cachar Hills in the Cachar District, and the Eastern Duars in the Goalpara District, *see* Gazette of India, 1897, Pt. I, p. 299 ;

the District of Sylhet, *see* Gazette of India, 1879, Pt. I, p. 631.

It has been declared, by notification under S. 3 (*b*) of the same Act, 1874 (14 of 1874), not to be in force in the scheduled District of Lahaul in the Punjab, *see* Gazette of India, 1886, Pt. I, p. 301.

It has been extended, by notification under S. 5 of the same Act, to the Tarai District of the North-Western Provinces, *see* Gazette of India, 1876, Pt. I, p. 506. **C**

(4) **Scope and nature of the Act.**

(*a*) Act XXV of 1867 has nothing to do with liability of the proprietor of the newspaper. 2 Ind. 193 (196) = 32 M. 338 = 5 M.L.T. 415 = 9 Cr. L.J. 506.

(*b*) It establishes the *prima facie* liability as publisher of the person who is the declared printer or publisher. (*Ibid.*)

(*c*) In his case the prosecution need not give any evidence that he is, in fact, the publisher. (*Ibid.*)

(*d*) It is enough to produce the declaration. But in the case of a person incriminated as proprietor it is necessary first of all to prove that he is the proprietor. (*Ibid.*)

(*e*) This Act was passed like 38 Geo. III. c. 78, S. 14 for the purpose of preventing the mischief arising from printing and publishing neswpapers by persons not known, and it was intended to facilitate proceedings, civil and criminal, against the persons concerned in such publications. 9 M. 387 (390) = 1 Weir 576. **D**

2.—"Preamble."

(1) **Legislative change.**

The word "three" in the preamble was repealed by the Press and Registration of Books Act Amendment Act, 1890 (10 of 1890), S. 1. **E**

(2) **Copyright whether infringed by translation.**

(*a*) Translations are not copies. 19 B. 557.

(*b*) A person by translating a book into another language does not render himself guilty of an infringment of copyright. 14 B. 586 (19 B. 557, *F.*). **F**

(3) **Registration of books published by Government.**

United Provinecs of Agra and Oudh.

Monographs and works of scientific or public interest which are published by or under the patronage of Goverment, but which do not come under the head of reports and are not of an exclusively official character, shall in all cases be registered under Act XXV of 1867.

When such works are printed under the direction or authority of any department, the Head of the Department should at once forward three copies to the Superintendent of the Government Press, who will take the necessary steps for registration under the Act. G.O.No. 1655 XII-246-2, dated 27th November, 1885. **G**

PART I.

PRELIMINARY.

Interpretation-clause.

1. In this Act, unless there shall be something repugnant in the subject or context,—

"Book."

"book" includes every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed or lithographed:

"British India."

"British India" means the territories which are or shall be vested in Her Majesty or Her Successors by the Statute 21 & 22 Vict., cap. 106 (*An Act for the better government of India*) * * * * .

"Magistrate."

"Magistrate" means any person exercising the full powers of a Magistrate [1], and includes a Magistrate of Police [2] * * * * :

Number.

words in the singular include the plural, and *vice versâ*:

Gender.

words denoting the masculine gender include females:

And in every part of British India to which this Act shall extend, "Local Government" shall mean the person authorized by law to administer executive government in such part, and includes a Chief Commissioner.

"Local Government."

(Notes).

Legislative Changes.

(*a*) The words "other than the Settlement of Prince of Wales' Island, Singapore and Malacca" after (An Act for the better Government of India) were repealed by the Repealing and Amending Act, 1891 (12 of 1891). **H**

(*b*) The words "and a Justice of the Peace" after Magistrate of Police were repealed by the Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890), S. 2. **I**

1—"Magistrate."

Now Magistrate of the first class, *see* the Code of Criminal Procedure, 1898 (Act 5 of 1898), S. 3. **J**

2.—"Magistrate of Police."

Now Presidency Magistrate, *see* the Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890), S. 3, and the Code of Criminal Procedure, 1898. **K**

2. [*Repeal of Act XI of 1835.*] *Rep. Act XIV of 1870.*

PART II.

OF PRINTING-PRESSES AND NEWSPAPERS.

3. Every book or paper printed within British India shall have printed legibly on it the name of the printer and the place of printing, and (if the book or paper be published) the name of the publisher and the place of publication.

Particulars to be printed on books and papers 1.

(Notes).

Legislative change.

The words "the name" after 'published' were inserted by the Repealing and Amending Act, 1891 (12 of 1891). **L**

1—"Particulars to be printed on books and papers."

(1) Analysis of section.

S. 3 of the Act lays down that on every paper printed in British India shall be printed legibly.—

(1) *Name of the printer*; (2) *place of printing*; (3) *name of publisher*; (4) *place of publication*. 2 Ind. Cas. 978=5 P.R. 1909 (Cr.)=15 P.W.R. 1909 =10 Cr. L.J. 195. **M**

I.—"Particulars to be printed on books and papers"—(Continued).

(2) **S. 3—Application.**

S. 3 applies to every volume of the book, as is to be seen by reference to the interpretation clauses of the Act. A.W.N. (1887), 95. **N**

(3) **Correct interpretation of rule in section.**

To correct interpretation of the rule in section 3, Act XXV of 1867, is that the name of the printer as such and the name of the publisher as such must be printed. 2 Ind. Cas. 978=5 P.R. 1909 (Cr.)=15 P.W.R. 1909 =10 Cr. L.J. 195. **O**

(4) **Object of rule in section.**

The object of the rule is that the paper should clearly intimate who is liable as printer and who is liable as publisher. (*Ibid.*) **P**

(5) **Rule contained in section not complied with—Effect.**

If the rule contained in section 3 has not been complied with, an offence has been committed and is punishable under S. 12. (*Ibid.*) **Q**

(6) **Scope and intention of section.**

(*a*) S. 3 is intended to inform the public who are the responsible printers and publishers of newspapers, and if the plain words of the section are to be departed from, the printers and publishers of newspapers might, under an assumed name or by using the name of an unregistered company, effectually prevent their identity from being established and that was the evil the section is intended to prevent. 16 M. 443 (445)=3 M.L.J. 201=1 Weir 862. **R**

(*b*) Words which contained no such information as is required by this section, would not amount to a sufficient compliance with the requirements of S. 3. (*Ibid.*) **S**

(*c*) The intention was not simply to provide some facility on the face of the paper. (*Ibid*). **T**

(*d*) Where a newspaper was printed and published bearing the following words, "printed and published at Cochin for the Malabar Economic Company at the said Company's Goshree Vilasam Press," *held*, that these words were not a sufficient compliance with the requirements of S. 3, inasmuch as there was no name of the printer as required by the Act. (*Ibid.*) **U**

Per Collins, C.J. and Muttusamy Ayyar, J.

(*e*) Under S. 3 of Act XXV of 1867, it is not necessary that the actual name of the printer should be given. So long as a name or style, which sufficiently designates the printer is given, it does not matter that it is not the actual name of the printer. It is sufficient that it is the name under which he chooses to do business and is generally known. Unless it can be said that the words do not convey to an ordinary reader the information required by the Act, the conviction for a non-compliance of the provisions of S. 3 cannot be supported. *Per Shephard, J.* 16 M. 443=3 M.L.J. 201=1 Weir 862. **V**

(7) **Names of printer and publisher, not printed as such.**

(*a*) Where a copy of a vernacular newspaper contained the following words printed on the margin of the front page '*ba ihtimam Ram Saran Datt printer. Hindustan Steam Press, Lahore men, Lala Bhawani Das, Manager ke liye chapa.*' *Held* that they do not contain a clear intimation as to the publisher, as required by S. 3 of Act XXV of 1867. 5 P.R. 1909 (Cr.). **W**

1.—"Particulars to be printed on books and papers"—(Concluded).

(*b*) Printers and publishers cannot be allowed to select for themselves the description to be used in professing to comply with the Act, but they must use the descriptions prescribed by the Act. 5 P.R. 1909 Cr. = 15 P.W.R. 1909 = 10 Cr. L.J. 195 = 2 Ind. Cas. 978. X

(8) Ss. 3 and 12—Scope.

Ss. 3 and 12 do not deal with intention. (*Ibid.*) Y

(9) Ss. 3 and 12—Meaning of "Publisher"—Booksellers.

The word "publisher" has been used in the Act in a restricted sense, and does not include a vendor of a newspaper or book. S. 12 read with S. 3 clearly indicates that such persons are not included in the word "publisher," for S. 3 enjoins the printing of the names of the printer and publisher. 23 C. 414. Z

Keeper of printing-press to make declaration [1].

4. No person shall, within British India, keep in his possession any press for the printing of books or papers, who shall not have made and subscribed the following declaration before the Magistrate within whose local jurisdiction such press may be:

"I, *A.B.*, declare that I have a press for printing at——."

And this last blank shall be filled up with a true and precise description of the place where such press may be situate.

(Notes).

1.—"Keeper of printing-press to make declaration."

(1) Change of place of printing press—New declaration.

The Act does not require a new declaration in cases where a press, as to which the printer has made the declaration prescribed by S. 4, is changed to another locality within the same local jurisdiction as the former place. 9 P.R. 1889 (Cr.). A

(2) Ss. 4, 5, 13—Offence of keeping printing press without making required declaration, if triable summarily—Necessity for a new declaration under S. 4 on change of place of printing.

Where an accused person convicted on a summary trial of an offence under S. 13, Act XXV of 1867, had removed his press, as to which he had made the declaration prescribed by S. 4 of the Act, from the building, in which it was originally kept, to another building and had not made a fresh declaration under S. 4 as to the new premises, on the ground that no fresh declaration was necessary, *held*, that the offence was not triable summarily, and that where the new place of business is within the same local jurisdiction as the former place, a fresh declaration was unnecessary; there is no clause in S. 4 of the Act (corresponding to the provision in S. 5) requiring a new declaration as often as a change of place takes place. 9 P.R. 1889 (Cr.). B

1.—"Keeper of printing press to make declaration"—(Continued).

(3) **Declaration made under the Act—Effect of the declaration—The declarant taking no part in the management of the press—Publication of a seditious book at the press—The declarant having no knowledge of the sedition and having no intention to publish it—Penal Code (Act XLV of 1860), S. 124-A—Sedition—Intention.**

The accused had made a declaration, under S. 4 of the Press Act (XXV of 1867), that he was the owner of a certain press called the "Atmaram press." The management of the press was carried on by another person who looked after the whole concern. At this press was printed a bulky book which purported to be one devoted to metaphysics and philosophy and was styled "Ekashloki Gita." It also contained seditious matter at long and varied intervals and interspersed with discussions of religious matters. The accused took no part in the management of the press; nor did it appear that he had read the book or acquainted himself with the nature of it. He was charged with the offence made punishable under S. 124-A, Penal Code, and convicted of the same. On appeal :—

Held by *Chandavarkar, J.*, that the cumulative effect of the surrounding circumstances was such as to make it as probable that the accused had not read the book as that he had known its seditious object; and that the evidence having thus been evenly balanced and equivocal, a reasonable doubt arose as to the guilt of the accused, the benefit of which must be given to him.

Held by *Heaton, J.*, that it was impossible to convict the accused under S. 124-A, Penal Code, unless it was found that he had an intention of exciting disaffection, and that the evidence fell very far short of proving the intention.

Per Chandavarkar, J.—A declaration made under S. 4 of the Press Act, 1867, is intended by the legislature to have a certain effect, namely, that of fastening responsibility for the conduct of the press on the person declaring in respect of matters where public interests are involved. Therefore, when a book complained of as seditious or libellous is printed in a press, the Court performing the functions of a jury may persume that the owner had a hand in the printing and was aware of the contents and character of the book. But whether such a presumption is warranted in any individual case must depend upon its own facts and circumstances. The presumption, however, is not conclusive, it is not one of law but of fact, and it is open to the accused to rebut it.

By what I am saying, I do not wish it to be understood that registered owners of printing presses, who have made declarations under S. 4 of the Act, can lightly escape from the responsibility which they have taken upon their shoulders by means of that declaration.

The law would not require an owner to make a declaration for nothing.

The object of making a declaration under S. 4 is to create a sense of responsibility, so that, if any public mischief occurs owing to any action or conduct of the press, the law can at once know who must *prima facie* be held responsible for it. At the same time, the Courts should be careful to draw no inference of guilt against the declarant from the

1.—"Keeper of printing press to make declaration"—(Concluded),

mere fact of declaration, but must consider the surrounding circumstances and probabilities to enable them to arrive at a conclusion whether the declarant had a hand in the printing and publishing so as to bring him within the operation of S. 124-A, Penal Code, where the charge is under that section.

Per Heaton, J.—An attempt to do a thing must necessarily involve some intention; for a man cannot be said to attempt to do that which he has absolutely no knowledge of doing and no intention to do. 12 Bom. L.R. 675 (Cr.). C

Rules as to publication of printed periodicals containing public news 1.

5. No printed periodical work, containing public news or comments on public news, shall be published in British India, except in conformity with the rules hereinafter laid down:

(1) The printer and the publisher of every such periodical work shall appear before the Magistrate within whose local jurisdiction such work shall be published, and shall make and subscribe, in duplicate, the following declaration:

"I, *A. B.*, declare that I am the printer [*or* publisher, *or* printer and publisher] of the periodical work entitled——and printed [*or* published, *or* printed and published, *as the case may be*] at——."

And the last blank in this form of declaration shall be filled up with a true and precise account of the premises where the printing or publication is conducted:

(2) As often as the place of printing or publication is changed, a new declaration shall be necessary:

(3) As often as the printer or the publisher who shall have made such declaration as is aforesaid shall leave British India, a new declaration from a printer or publisher resident within the said territories shall be necessary.

(Notes).

1.—"Rules as to....public news."

(1) Scope of section.

S. 5 enacts that no printed periodical work, containing public news or comments on public news, shall be published in British India, unless the printer and the publisher of every such periodical shall make a declaration that they are the printer and publisher of such periodical work. 16 M. 443 (444)=3 M.L.J. 201=1 Weir 862. D

It is essential that the name of the printer and in this case the publisher be printed on the paper—this appears clear by the form of declaration given in S. 5. (*Ibid.*) E

1.—"Rules as to....public news"—(Concluded).

(2) **S. 5—Penal Code, Ss. 499 and 500—Defamation by newspaper—Liability of printer and publisher—Presumption—Burden of proof.**

Although S. 499 requires proof of publication in order to support a conviction for defamation, the intention of Act XXV of 1867 was to constitute the declarations made by a person that he was the printer and publisher of a newspaper into *prima facie* evidence of publication and to throw on the accused the burden of showing that the actual publisher of the libel was not the person mentioned in the declaration. The presumption could be rebutted if such person showed that he entrusted in good faith the temporary management of the newepaper to a competent person during his absence, and that the libel was published without his authority, knowledge or consent. 9 M. 387=1 Weir 576. (22 B. 152, *R.*). F

(3) **Declarations—Stamp duty.**

UNITED PROVINCES.

All declarations made under S. 5 of Act XXV of 1867 are exempt from stamp duty under Sch. II, Art. 1 (*b*) of Act I of 1879, as they are declarations which are required to be deposited only, *i.e.*, filed at once among the records, in the offices of the Magistrate and of the High Court of Judicature. G.O. No. 1387, XII—59 B, dated 16th September 1891. G

Authentication of declaration.

6. Each of the two originals of every declaration so made and subscribed as is aforesaid, shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made.

Deposit.

One of the said originals shall be deposited among the records of the office of the Magistrate, and the other shall be deposited among the records of the High Court of Judicature, or other principal Civil Court of original jurisdiction for the place where the said declaration shall have been made.

Inspection and supply of copies.

The officer in charge of each original shall allow any person to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said declaration, attested by the seal of the Court which has the custody of the original, on payment of a fee of two rupees.

(Notes).

Legislative change.

"The words other principal Civil Court of original jurisdiction for the place where in S. 6 were substituted for the words "other Court within the local limits of whose ordinary original civil jurisdiction" by the Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890), S. 3. H

Office copy of declaration to be *prima facie* evidence.

7. In any legal proceeding whatever, as well civil as criminal [1], the production of a copy of such declaration as is aforesaid, attested by the seal of some Court empowered by this Act to have the custody of such declarations, shall be held (unless the contrary be proved [2]), to be sufficient evidence, as against the person whose name shall be subscribed to such declaration, that the said person was printer or publisher, or printer and publisher (according as the words of the said declaration may be) of every portion of every periodical work whereof the title shall correspond with the title of the periodical work mentioned in the declaration[3].

(Notes).

1.—"In any legal....civil as criminal."

(1) Section applies to what proceedings.

S. 7 applies both to civil and criminal proceedings, and the object of the section is very clear. 35 C. 945 (952). **I**

(2) Liability of printer or publisher for seditious matter appearing in his newspaper.

This section makes the printer or publisher responsible for whatever may appear in a newspaper, whoever the writer of the article in it may be; and, therefore, a prosecution may proceed against the printer, unless he can prove absence from the newspaper office in good faith and without knowledge that the seditious articles would be published during his absence. But it is not absence in good faith for a printer, to go away knowing very well what is going to happen in his absence, and for the purpose of shirking his liability. 35 C. 945. **J**

2.—"Unless the contrary be proved."

(1) Responsibility of printer—Publication of seditious matter—Want of knowledge or intention, or absence not a good defence.

(*a*) Under S. 7 of the Act XXV of 1867 a printer must be held to be printer of every portion of every periodical work, whereof the title shall correspond with the title of the periodical mentioned in his declaration, unless the contrary is proved. 69 P.L.R. 1905=1 P.R. 1905 (Cr.)=2 Cr. L.J. 31. **K**

(*b*) The words "unless the contrary is proved" allude to the fact that he is the printer, for he might have ceased to be so and do not refer merely to temporary absence during which his work might be carried on by subordinates. (*Ibid.*) **L**

The section means that so long as he is the registered printer, and the printer in fact, he must be held responsible, not that he can escape responsibility by mere temporary absence and want of actual knowledge even if proved. (*Ibid.*) **M**

(*c*) To hold this would be to destroy almost entirely the value of the responsibility laid upon a registered printer by Act XXV of 1867. (*Ibid.*) **N**

2.—"Unless the contrary be proved"—(Concluded).

(2) S. 7—Declaration by printer—Liability of printer.

A person, who subscribes to the declaration under the Printing Presses and Newspapers Act, must be presumed, under this section, to be cognisant of all that he was printing and publishing and, in the absence of any evidence to the contrary, his liability in the matter cannot be gainsaid. 7 C.L.J. 49=7 Cr.L.J. 10=35 C. 141=2 M.L.T. 500. **O**

(3) Section throwing *onus* on accused.

(*a*) The burden of proving that he was not the printer in fact is clearly thrown upon the accused by S. 7 of that Act. 69 P.L.R. (1905)=1 P.R. 1905 (Cr.)=2 Cr.L.J. 31. **P**

(*b*) It has distinctly been said that the provisions of S. 7 of Act XXV of 1867 throw the *onus* upon the accused person, who is bound to prove the contrary. 35 C. 945 (953). **Q**

3.—"Sufficient evidence....declaration."

Effect of declaration made under S. 7 as printer—Evidence—Presumption.

(*a*) The fact that a person makes a declaration as printer of a newspaper, under section 7 of the Printing Presses and Newspapers Act, raises a presumption of his liability as printer and publisher for seditious articles published therein, and if that presumption is not rebutted his guilt is conclusively established. 2 Ind. Cas. 193=5 M.L T. 415=32 M. 338=9 Cr. L.J. 506=(9 M. 387, *F.*). **R**

(*b*) The publication of a seditious article in a newspaper is not ordinarily the work of either the writer alone, or of the proprietor alone, or of the editor alone, or even of all three together. (*Ibid.*) **S**

(*c*) The *maxim qui facit per aluim facit per se* applies and the publication should be held to be the act of the person or persons who authorised it, and the grant of authority may be proved by direct evidence or as a reasonable inference from the conduct of the parties and all the surrounding circumstances. (*Ibid.*) **T**

(*d*) In each case it is a pure question of fact, to be proved like any other fact by direct evidence or as a reasonable inference from facts proved or admitted, and considered in relation to all the circumstances of the particular case. (*Ibid.*) **U**

(*e*) Where it is sought to incriminate the printer for seditious articles published in a newspaper, the prosecution need not give any evidence that he is the printer or the publisher. (*Ibid.*) **V**

(*f*) It is enough to produce the declaration made by him under S. 7 of Act XXV of 1867. (*Ibid.*) **W**

(*g*) But in the case of a person incriminated as proprietor, it is necessary first of all to prove that he is the proprietor. (*Ibid.*) **X**

(*h*) The question of what presumption, if any will arise from such proof, will depend on circumstances. (*Ibid.*) **Y**

(*i*) In the case of a large paper with a separate editor, who is responsible for the selection and publication of literary matter, no presumption can *prima facie* be made that the proprietor authorised the publication of seditious matter appearing in it. Nor can such presumption be made in the case of an absentee proprietor. (*Ibid.*) **Z**

3.—"Sufficient evidence....declaration"—(*Concluded*).

(*j*) But such presumptions in favour of the proprietor can be rebutted by proof, direct or inferential, that the proprietor did, in fact, authorise the publication. In the case of a petty paper, with no separate editor responsible for the literary matter and published under the eye of the proprietor, the presumption that the proprietor authorised the publication of seditious articles appearing in it might be an eminently reasonable one, though of course, it would be open to the proprietor to rebut it and prove that the publication was, in fact, not authorised by him. (*Ibid.*) **A**

New declaration by persons who have signed declaration and subsequently ceased to be printers or publishers.

8. Provided always that any person who may have subscribed any such declaration as is aforesaid, and who may subsequently cease to be the printer or publisher of the periodical work mentioned in such declaration, may appear before any Magistrate, and make and subscribe in duplicate the following declaration :—

"I, *A. B.*, declare that I have ceased to be the printer [*or* publisher, *or* printer and publisher] of the periodical work entitled——."

Authentication and filing.

Each original of the latter declaration shall be authenticated by the signature and seal of the Magistrate before whom the said latter declaration shall have been made, and one original of the said latter declaration shall be filed along with each original of the former declaration.

Inspection and supply of copies.

The officer in charge of each original of the latter declaration shall allow any person applying to inspect that original on payment of a fee of one rupee, and shall give to any person applying a copy of the said latter declaration, attested by the seal of the Court having custody of the original, on payment of a fee of two rupees.

Putting copy in evidence.

In all trials in which a copy, attested as is aforesaid, of the former declaration shall have been put in evidence, it shall be lawful to put in evidence a copy, attested as is aforesaid, of the latter declaration, and the former declaration shall not be taken to be evidence that the declarant was, at any period subsequent to the date of the latter declaration, printer or publisher of the periodical work therein mentioned.

PART III [1].

DELIVERY OF BOOKS.

Copies of books printed after commencement of Act to be delivered gratis to Government.

9. Printed or lithographed copies of the whole of every book which shall be printed or lithographed in British India after this Act shall come into force, together with all maps, prints or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same, shall, notwithstanding any agreement (if the book be published) between the printer and publisher thereof, be delivered by the printer at such place and to such officer as the Local Government shall, by notification [2] in the official Gazette, from time to time direct, and free of expense to the Government, as follows, that is to say :—

(*a*) in any case, within one calendar month after the day on which any such book shall first be delivered out of the press, one such copy, and,

(*b*) if within one calendar year from such day the Local Government shall require the printer to deliver other such copies not exceeding two in number, then within one calendar month after the day on which any such requisition shall be made by the Local Government on the printer, another such copy, or two other such copies, as the Local Government may direct,

the copies so delivered being bound, sewed or stitched together and upon the best paper on which any copies of the book shall be printed or lithographed.

The publisher or other person employing the printer shall, at a reasonable time before the expiration of the said month, supply him with all maps, prints and engravings finished and coloured as aforesaid, which may be necessary to enable him to comply with the requirements aforesaid.

Nothing in the former part of this section shall apply to—

(*i*) any second or subsequent edition of a book in which edition no additions or alterations either in the letter-press or in the maps, book prints or other engravings belonging to the book have been made, and a copy of the first or some preceding edition of which book has been delivered under this Act, or

(*ii*) any periodical work published in conformity with the rules laid down in section 5 of this Act.

(Notes).

1.—"Part III."

Legislative change.

This Part was substituted for the original Part III (relating to the delivery to the Local Government of all published books, etc., and to the payment therefor and disposal of the copies) by the Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890), S. 4. **B**

2.—"Local Government by notification."

[N.B.--See Notes under S. 20, *infra*.]

Officers to whom books are to be delivered under this section.

For———in :—

(1) Ajmer, *see* Ajmer Local Rules and Orders, Vol. I, p. 8.

(2) Assam, *see* Assam Manual of Local Rules and Orders, p. 10 (rule 1.)

(3) Bengal, *see* Bengal Statutory Local Rules and Orders, Vol. II, p. 16 (rule 1.)

(4) Burma, *see* Burma Rules Manual, Vol. I, p. 10.

(5) Central Provinces, *see* Central Provinces Local Rules and Orders, p. 22 (rule 1).

(6) Madras, *see* Madras Local Rules and Orders, Vol. I, p. 32 (rule 1).

(7) Punjab, *see* Punjab List of Local Rules and Orders, p. 23.

(8) Bombay. **C**

Directing the places at which, and the officers to whom, the delivery of books shall be made by printers.

Notn. No. 994, dated 16th March, 1891, B.G.G. 1891, pt. 1, p. 254.—In exercise of the powers conferred by S. 9 of Act XXV of 1867, as amended by Act X of 1890, and in supersession of the directions contained in the Notification published under the said section in the *Bombay Government Gazette* for 1868, p. 93, His Excellency the Governor in Council is pleased to direct that the places and officers at which and to whom the delivery of books by printers in accordance with the said section shall be made, shall be as follows :—

In the case of book issuing from a Press situated in the Town or Island of Bombay,—

At the office of the Collector of Land Revenue, Customs and Opium, Bombay, and to the Collector of Land Revenue, Customs and Opium, Bombay.

In the case of books issuing from a press situated elsewhere,—

At the head-quarter station of the Collector of the district in which the Press issuing the book is situated, and to the Collector of that district. **D**

United Provinces of Agra and Oudh.

(9) Magistrate of District to receive copies of all books printed or lithographed.

The Magistrate of the district shall be the officer to whom copies of all books printed or lithographed in the district shall be delivered by the printer in pursuance of cl. (*a*), and in compliance with any requisition made under cl. (*b*) of the abovementioned section. G. O. No. 1454/ XII—344, dated the 16th September, 1893. **E**

Receipt for copies delivered under section 9.

10. The officer to whom a copy of a book is delivered under the last foregoing section shall give to the printer a receipt in writing therefor.

Disposal of copies delivered under section 9.

11. The copy delivered pursuant to clause (*a*) of the first paragraph of section 9 of this Act shall be disposed of as the Local Government shall from time to time determine [1]. Any copy or copies delivered pursuant to clause (*b*) of the said paragraph shall be transmitted to the British Museum or the Secretary of State for India, or to the British Museum and the said Secretary of State, as the case may be.

(Notes).

1.—"Local Government shall from time to time determine."

Disposal of copies.

(i) Burma.

As to where copies in Burma are to be deposited, *see* Notification No. G. D. 123, dated 13th June, 1890, Burma Rules Manual, Ed. 1903. **E-1**

(ii) United Provinces of Agra and Oudh.

The copy of every book delivered in pursuance of cl. (*a*) of S. 9 to the Magistrate of the district shall be transmitted by him to the Superintendent of the Government Press, and shall be deposited by the Superintendent in the Government Book Depot. Provided always that the Government, on its own motion, or on the recommendation of the Superintendent, may direct in any particular case that the book be kept in some public library in the Provinces on a guarantee that it be not removed from there or lent out. G. O. No. 1454/XII—344, dated 16th September, 1893. **F**

PART IV.

PENALTIES.

Penalty for printing contrary to rule in section 3 1.

12. Whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 of this Act shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

(Notes).

[**N.B.**—See also notes under S. 3.]

1.—"Penalty.... section 3."

(1) Scope of section.

(*a*) S. 12 provides a penalty for printing or publishing any paper otherwise than inconformity with the rule contained in S. 3. 16 M. 443 (444) = 3 M.L.J. 201 = 1 Weir 862. **G**

(*b*) S. 12 of the Act refers to S. 3. 23 C. 414 (415). **H**

I.—" Penalty....section 3 "—(Concluded).

(2) **Ss. 1, 3 and 12—"Publisher," who is—Penal Code, Ss. 484, 486—Cr. P. C. (1882), S. 439—Revisional powers of High Court.**

In this case, the accused caused to be printed copies of certain books, which previously had been printed at the Government press, Allahabad, and offered them for sale and sold some of them. Some of these books did not contain the name of the printer and the place of printing, or the name of the publisher and the place of publication. Other books had printed upon them the words "Government Press Allahabad." *Held*, that, in respect of the former set of books, the accused was properly convicted of an offence under S. 12 of the Act, for a man who causes a book to be printed and offers it to the public for sale is a publisher within the meaning of Ss. 3 and 12 of the Act. *Held* further, that, in respect of the latter set of books the prisoner was guilty of an offence under S. 12, but not under S. 486, I.P.C. The High Court is competent, in revision, to alter a finding of conviction, maintaining the sentence. A.W.N. 1887, 95. **I**

Penalty for keeping press without making declaration required by section 4.

13. Whoever shall keep in his possession any such press as aforesaid, without making such a declaration as is required by section 4 of this Act, shall, on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, or by simple imprisonment for a term not exceeding two years, or by both.

Punishment for making false statement.

14. Any person who shall, in making any declaration under the authority of this Act, make a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall on conviction before a Magistrate, be punished by fine not exceeding five thousand rupees, and imprisonment for a term not exceeding two years.

Penalty for printing or publishing periodicals without conforming to rules.

15. Whoever shall print or publish any such periodical work as is hereinbefore described without conforming to the rules hereinbefore laid down, or whoever shall print or publish, or shall cause to be printed or published, any such periodical work, knowing that the said rules have not been observed with respect to that work, shall, on conviction before a Magistrate, be punished with fine not exceeding five thousand rupees, or imprisonment for a term not exceeding two years, or both.

Penalty for not delivering books or not supplying printer with maps.

[1] **16.** If any printer of any such book as is referred to in section 9 of this Act shall neglect to deliver copies of the same pursuant to that section, he shall for every such default forfeit to the Government such sum not exceeding fifty rupees as a Magistrate having jurisdiction in the place where the book was printed may, on the application of the officer to whom the copies should have been delivered or of any person authorized by that officer in this behalf, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the copies which the printer ought to have delivered.

If any publisher or other person employing any such printer shall neglect to supply him, in the manner prescribed in the second paragraph of section 9 of this Act, with the maps, prints or engravings which may be necessary to enable him to comply with the provisions of that section, such publisher or other person shall for every such default forfeit to the Government such sum not exceeding fifty rupees as such a Magistrate as aforesaid may, on such an application as aforesaid, determine to be in the circumstances a reasonable penalty for the default, and, in addition to such sum, such further sum as the Magistrate may determine to be the value of the maps, prints or engravings which such publisher or other person ought to have supplied.

(Notes).

1.—"S. 16."

Legislative change.

This section was substituted for the original S. 16 by the Press and Registration of Books Act (1867) Amendment Act, 1890 (10 of 1890), S. 5 J

Recovery of forfeitures and disposal thereof and of fines.

[1] **17.** Any sum forfeited to the Government under the last foregoing section may be recovered, under the warrant of the Magistrat, determining the sum, or of his successor in office, in the manner authorised by the Code of Criminal Procedure for the time being in force, and within the period prescribed by the Indian Penal Code, for the levy of a fine. XLV of 1860.

All fines or forfeitures under this Part of this Act shall, when recovered, be disposed of as the Local Government shall from time to time direct.

(Notes).

1.—"S. 17."

(1) **Legislative change.**

This section was substituted for the original S. 17 by the Press and Registration of Books Act (1867), Amendment Act, 1890 (10 of 1890), S. 5. **K**

(2) **United Provinces of Agra and Oudh.**

All fines or forfeitures under Pt. IV of the Act shall be credited to Government. G.O.N. 1454, XII—344, dated 16th September. 1893. **L**

PART V.

REGISTRATION OF BOOKS.

Registration of memoranda of books.

18. There shall be kept at such office, and by such officer as the Local Government shall appoint in this behalf, a book to be called a Catalogue of Books [1] printed in British India, wherein shall be registered a memorandum of every book which shall have been delivered pursuant to clause (*a*) of the first paragraph of section 9 of this Act. Such memorandum shall (so far as may be practicable) contain the following particulars (that is to say) :—

(1) the title of the book and the contents of the title-page, with a translation into English of such title and contents, when the same are not in the English language :

(2) the language in which the book is written:

(3) the name of the author, translator or editor of the book or any part thereof :

(4) the subject :

(5) the place of printing and the place of publication :

(6) the name or firm of the printer and the name or firm of the publisher :

(7) the date of issue from the press or of the publication :

(8) the number of sheets, leaves or pages :

(9) the size :

(10) the first, second or other number of the edition :

(11) the number of copies of which the edition consists :

(12) whether the book is printed or lithographed :

(13) the price at which the book is sold to the public : and

(14) the name and residence of the proprietor of the copyright or of any portion of such copyright.

Such memorandum shall be made and registered in the case of each book as soon as practicable after the delivery of the copy thereof pursuant to clause (*a*) of the first paragraph of section 9.

Effect of registration.

Every registration under this section shall, upon payment of the sum of two rupees to the officer keeping the said Catalogue, be deemed to be an entry in the Book of Registry kept under Act No. XX of 1847 (*for the encouragement of learning in the territories subject to the government of the East India Company, by the defining and providing for the enforcement of the right called copyright therein*); and the provisions contained in that Act as to the said Book of Registry shall apply, *mutatis mutandis*, to the said Catalogue.

Act XX of 1847 applied.

(Notes).

Legislative changes.

(*a*) The words "pursuant to clause (*a*)....Section 9" in S. 18 were substituted for the words and figure "pursuant to section 9" by the Press and Registration of Books Act (1867) Amendment Act, 1890 (X of 1890), S. 6. **M**

(*b*) The "words copy thereof pursuant to clause (*a*) of the first paragraph of Section 9", were substituted for the words "copies thereof in manner aforesaid" by the Press and Registration of Books Act (1867) Amendment Act, 1890 (X of 1890), S. 6. **N**

1.—"Catalogue of Books."

(1) Catalogue of books, where to be kept.

(i) ASSAM AND BURMA.

For notification directing by whom and where the catalogue of books under this section is to be kept in (1) Assam, *see* Assam Gazette, 1905, Pt. II, p. 190, and (2) Burma, *see* Burma Rules Manual, Ed. 1903. **O**

(ii) UNITED PROVINCES OF AGRA AND OUDH.

The Superintendent, Government Press, is appointed to maintain, at his office, the book called "A Catalogue of Books printed in British India." G.O. No. 1454, XII—344, dated 16th September, 1893. **P**

(2) Expunging of entries—Calcutta High Court—Jurisdiction.

The High Court of Calcutta has jurisdiction to order the expunging of entries in the catalogue of books kept in Bombay under S. 18 of the Press and Registration of Books Act (XXV of 1867). 9 C.W.N. 591=1 C. L.J. 278. **Q**

Publication of memoranda registered.

19. The memoranda registered during each quarter in the said Catalogue shall be published in the local Gazette as soon as may be after the end of such quarter, and a copy of the memoranda so published shall be sent to the said Secretary of State, and to the Secretary to the Government of India in the Home Department, respectively.

PART VI.

MISCELLANEOUS.

Power to make rules.

20. The Local Government shall have power to make such rules [1] as may be necessary or desirable for carrying out the objects of this Act, and from time to time to repeal, alter and add to such rules.

Publication.

All such rules, and all repeals and alterations thereof, and additions thereto, shall be published in the local Gazette.

(Notes).

1.—"The Local Government....rules."

RULES.

A.—Bengal.

Notification dated the 2nd December, 1890 (published in the Calcutta Gazette of 1890, part I, pp. 1136—1138).

Under the provisions of S. 20 of Act XXV of 1867, as amended by Act X of 1890 (an Act for the regulation of printing presses and newspapers, for the preservation of copies of books printed in British India, and for the registration of such books) the Lieutenant-Governor is pleased to make the following rules in supersession of all other rules on the subject:—

RULE I.

The undermentioned are hereby declared to be the officers to whom, and the places at which, deliveries of copies of books shall be made under the provisions of S. 9 of the Act, *viz.*:—

Copies of books printed or published in the town of Calcutta shall be delivered to the Inspector-General of Registration at his office.

Copies of books printed or published at any place other than the town of Calcutta shall be delivered to the Sub-Registrars of Assurances in whose jurisdiction the books are printed, at the sub-registry office.

RULE II.

One copy of every volume of any book, part or division of a volume and pamphlet, in any language, and one copy of every sheet of music, map, chart or plan, shall be delivered to the abovenamed officers within one calendar month from the date on which the book was first delivered out of the press by the printer thereof, with the exception of the second and subsequent editions in which no additions or alterations, either in the letter-press or in the maps, prints and other engravings belonging to the book, have been made, and with the exception of books exempted from the provisions of the Act by the Governor-General in Council under S. 21 of the Act.

RULE III.

An additional copy of any volume of any book, part or division of a volume and pamphlets, in any language, and an additional copy of any sheet

I.—"The Local Government....rules"—(Continued).

A.—Bengal—(*Continued*).

of music, map, chart or plan, one copy of which has already been delivered under the provisions of the preceding rule, shall be delivered to the same officer by the printer thereof, if required by the Local Government, within one calendar month from the date of such requisition.

Two such requisitions may be made within one calendar year from the date of first delivery of the books out of the press.

RULE IV.

If the copies of books tendered for delivery shall not be tendered bound, sewed or stitched together, and upon the best paper, finished and coloured in the same manner as the best copies of the same, as prescribed by S. 9 of the Act, with the entire number of pages consecutively marked, and in cases of serial publications, where the previous numbers have not been delivered, the officer to whom delivery is tendered shall be at liberty to refuse to take delivery.

RULE V.

The person who tenders copies of books for delivery shall at the same time give in a certificate in the following form, *viz.* :—

"I. A. B., hereby do certify that the accompanying book was first delivered out of the press on of A.D. 18

"A.B.,
Printer."

"And I, A.B., hereby do certify that the accompanying book is being delivered within one month from the date of the receipt of the requisition made by the Local Government on the of A.D. 18

"A.B.,
Printer."

RULE VI.

If the Inspector-General of Registration shall have reason to believe that any book has been printed in Calcutta, and that no copies of such book have been delivered, as required by Rule I above, within the time of one calendar month after the day on which such book was first delivered out of the press as prescribed by the Act; or if any sub-Registrar shall have reason to believe that any book has been printed within his sub-district, and that no copies of it have been delivered as aforesaid; or if any officer to whom delivery of a book is tendered shall have reason to believe that the book tendered was not so tendered within one calendar month after the day on which such book was first delivered out of the press; and if the said Inspector-General of Registration or any sub-Registrar as aforesaid shall be of opinion that action should be taken under section 16 to punish the act of default, he shall apply to the Magistrate having jurisdiction either himself or by an officer authorized in this behalf.

RULE VII.

The Magistrate, on receipt of the application, shall hold such inquiry as he may think fit, and determine what would be a reasonable penalty under S. 16 of the Act.

I.—"The Local Government....rules"—(Continued).

A.—Bengal—(*Continued*).

RULE VIII.

If the printer delivers the book and the publisher has failed to supply him with maps, prints or other engravings belonging thereto, and the registering officer shall be of opinion that action should be taken under S. 16 to punish the act of default on the part of the publisher, he shall apply to the Magistrate himself or by an officer authorized in this behalf.

RULE IX.

The Magistrate, on receipt of the application, shall hold such inquiry as he may think fit, and determine what would be a reasonable penalty under S. 16 of the Act.

RULE X.

On receipt of a copy of the book tendered for delivery under the above rules, the officer receiving the same shall give to the person tendering delivery a receipt in the following form :—

"I, A.B., do hereby acknowledge to have received from C.D., the printer, one copy of the following book (here enter such particulars of the memoranda annexed to S. 18 of the Act as are applicable), and I do hereby certify that the same is stated to have been first delivered out of the press on the of 18 , or that the requisition for a second or third copy made by the Local Government is stated to have been received on the of 18 .

"A.B.,
Inspector General of Registration,
&c.,
(as the case may be)."

RULE XI.

If the proprietor of the copyright. or of any portion of the copyright, of any book delivered under these rules shall desire to register his proprietorship, he shall pay the sum of Rs. 2 to the officer to whom delivery of the book shall have been made, and such officer shall grant a receipt for the money paid, and shall transmit the money to the officer appointed to keep the catalogue of books under S. 18 of the Act. Tender of payment for such registration shall be made by an application in writing praying for registration under Act XX of 1847.

RULE XII.

All officers who receive delivery of copies of books under these rules shall transmit the same forthwith to the Bengal Library together with the certificate under Rule V.

RULE XIII.

The Bengal Library shall, until further notice, be the place in which the copy received under cl. (*a*), S. 9, shall, under the provisions of S. 11 of the Act, be for the time being deposited.

RULE XIV.

The Bengal Library shall, for the time being, be the place at which the Catalogue Book prescribed by S. 18 of the Act shall be kept for the Provinces subject to the control of the Lieutenant-Governor of Bengal, and the Catalogue shall be kept by an officer appointed on this behalf by Government.

I.—"The Local Government....rules"—(Continued).

A.—Bengal—(*Concluded*).

RULE XV.

Books catalogued under S. 18 of the Act shall remain in the Bengal Library for three years, and then be sent to the Calcutta Public Library, Metcalfe Hall, to be kept in the portion of the Library devoted to the public, and not issued to subscribers.

RULE XVI.

In the case of Books of which the copyright is registered the catalogue-keeper shall send to the office of the Secretary to the Government of India, Home Department, extracts of the Catalogue containing the particulars required by the schedule annexed to Act XX of 1847 for entry in the Book of Registry kept at the said office. **R**

B.—Bombay.

RULES UNDER S. 20 OF THE ACT.

An Act for the regulation of Printing Presses and Newspapers, for the preservation of copies of books printed in British India and for the registration of such books.

Notn. No. 994-A, dated 16th March, 1891, B.G.G. 1891, pt. I, p. 255.—In exercise of the powers conferred by S. 20 of Act XXV of 1867 as amended by Act X of 1890, and in supersession of the rules made under the said section and published at the *Bombay Government Gazette* of 1871, p. 783, His Excellency the Governor-in-Council is pleased to make the following rules, namely :—

I.—Every Collector on receiving from a Printer delivery of a book under cl. (*a*) of the first paragraph of S. 9 of Act XXV of 1867 as amended by Act X of 1890, shall forward the same to the Registrar of Native Publications.

II.—The Registrar of Native Publications on receiving a book forwarded under the Rule last preceding shall, after the same has been registered, use it for the preparation of the annual review of the literature, and when it is no longer required for that purpose, shall forward it to the Director of Records at the Record Office.

III.—The memoranda required by S. 19 of the said Act to be published quarterly in the local Gazette shall be prepared by the Registrar of Native Publications, who shall send fifteen copies of the memoranda so published to the Under Secretary to Government, General Department.

IV.—Copies of books delivered under cl. (*b*) of S. 9 of Act XXV of 1867, as amended by Act X of 1890, shall be forwarded to the Curator, Government Central Book Depot, who shall transmit the same through Government in the General Department to the Secretary of State for India or the British Museum or to both on the receipt of orders and in accordance therewith. [Added by Notification No. 1326, dated 15th April, 1891, B.G.G., 1891, Pt. I, p. 327.] **S**

C.—Burma.

General Department Notification No. 27, dated the 23rd February, 1898—Burma Gazette, Pt. I, p. 99.

I.—"The Local Government....rules"—(Continued).

C.—Burma—(*Concluded*).

Under the provisions of S. 20 of Act XXV of 1867 (Printing Presses and Books), as amended by Act X of 1890, and in supersession of these department notifications cited in the margin, the Lieutenant-Governor is pleased to make the following rules for carrying out the objects of the Act in Burma :—

No. 200, dated 9th July, 1889.
No. 124, dated 13th June, 1890.

RULES UNDER S. 20.

1. The printer who tenders copies of books for delivery under S. 9 of the Act shall at the same time deliver a certificate in the following form, namely :—

"I, A. B., hereby do certify that the accompanying book was first delivered out of the press on the of 18 .

"A. B.,
Printer."

2. On receipt of a copy of a book under the provisions of Rule 1, the Deputy Commissioner receiving the same shall give to the printer tendering delivery a receipt in the following form, namely :—

"I, A. B., hereby acknowledge to have received from C. D., the printer, one copy of the undermentioned book (*here enter the title and subject of the book and the name of the author, translator, or editor*), and I do hereby certify that the same is stated to have been first delivered out of the press on the of 18 .

"A. B.,
Deputy Commissioner,
".....*District.*"

3. If the copies of books tendered for delivery shall not be tendered bound, sewed or stitched together, and upon the best paper as prescribed by S. 9 of the Act, the officer to whom delivery is tendered shall be at liberty to refuse to take delivery.

4. The payment of Rs. 2 which, under S. 18 of the Act, must be made by a person desiring to register his proprietorship of a book, may be made to the officer to whom delivery of the book shall have been made under S. 9 of the Act. Such officer shall grant a receipt for the money paid, pay the money into the nearest treasury, and transmit the receipted chalan to the Secretary to Government.

5. Every officer who receives a copy of a book under these rules shall transmit it, accompanied by a memorandum of the particulars mentioned in S. 18 of the Act, to the office of the Secretary to Government within seven days from the receipt of the book.

6. When the copyright of a book has been registered in accordance with the provisions of S. 18 of the Act, the officer appointed under the said section shall send to the office of the Secretary to the Government of India, Home Department, extracts from the catalogue containing the particulars entered in the first schedule of Act XX of 1847 for entry in the book of registry kept at the said office.

T

I.—"The Local Government....rules"—(Continued).

D.—United Provinces of Agra and Oudh.

RULES UNDER S. 20.

1. Every printer of a book when delivering the first copy thereof to the Magistrate of the district, as required by cl. (*a*) of S. 9 of the Act, shall also fill up and present (for transmission to the Superintendent of the Government Press), a memorandum in the form prescribed by S. 18, giving the particulars of the book.

2. Upon the receipt by the Superintendent, Government Press, of the copy of every book (together with the memorandum) received by him from the Magistrate of a district on delivery under cl. (*a*) of S. 9 of the Act, he shall record the book in the Catalogue of Books printed in British India before depositing it according to the orders issued under S. 11 of the Act.

3. Every printer or publisher desiring to register the copyright of any book in conformity with the last clause of S. 18 of the Act shall deliver the fee of two rupees to the Magistrate to whom the book was delivered under S. 9, to be received by him on behalf of the Superintendent, Government Press.

4. Every Magistrate, receiving such fee shall forward it to the Superintendent, Government Press, who shall thereupon enter the registration of copyright in the Catalogue of Books printed in British India, and shall send to the Magistrate for delivery to the applicant a certificate of copyright. [G.O. No. 2004, XII—344, dated 30th December, 1893.] U

E.—Central Provinces.

13-7-67, Supplement to C P. Gaz., and 14-11-90, No. 7190, C.P. Gaz., Pt. II, p. 296.

The following rules made by the Chief Commissioner under S. 20 of Act XXV of 1867, as amended by Act X of 1890 (Printing Presses and Books), are published for general information, in supersession of the rules hitherto in force under the said section.

I. The copy of the book referred to in cl. (*a*) of the first paragraph of S. 9, together with a memorandum giving the particulars referred to in S. 18, will be delivered by the printer to the Deputy Commissioner of the district in which the press issuing the work is situated.

II. The Deputy Commissioner will send the copy to the Curator of the Government Book Depot, Nagpur, for deposit in the Nagpur Museum Library. It will be accessible to the public for reference.

Vide C.P. Gaz., Notification No. 7957 of 18-11-91, Pt. II, p. 308.

III. All fines and forfeitures recovered under the Act, shall, from time to time, be paid into the Treasury to the credit of "22—Education—Government Book Depot," the Treasury chalan being sent to the Inspector-General of Education.

IV. The catalogue prescribed by S. 18 will be kept by the Curator, who will transmit to the Chief Commissioner's Office, quarterly, a copy of memoranda registered during the preceding quarter, for disposal in accordance with S. 19 of the Act. V

1.—"The Local Government....rules"—(Concluded).

F.—Other places.

For rules made under this power for—

(1) Ajmer-Merwara, *see* Ajmer Local Rules and Order, Vol. I, p. 8;

(2) Assam, *see* the Eastern Bengal and Assam Gazette, 1906, Pt. II, p. 359,

(3) Madras, *see* Fort St. George Gazette, 1902, Pt. I B, p. 204, and *ibid.* 1907, Pt. I B, p. 20;

(4) Punjab, *see* Punjab Gazette, 1904, Pt. I, p. 432. W

Power to exclude any class of books from operation of Act 1.

21. The Governor-General of India in Council may, by notification in the Gazette of India, exclude any class of books from the operation of the whole or any part or parts of this Act.

(Notes).

1.—"Power to exclude....Act."

(1) Exemption of official publications from provisions of Printing Presses and Books Act, 1867 (25 of 1867).

No. 1294, dated the 12th March, 1869.—By virtue of the power vested in the Governor-General in Council by S. 21 of Act XXV of 1867, entitled "An Act for the Regulation of Printing Presses and Newspapers, for the preservation of copies of Books printed in British India and for the registration of such books," His Excellency in Council is pleased to declare that all books, maps, sketches, charts, and papers printed or published under orders of Government or for official purposes, are exempted from the provisions of the said Act.

[See Gazette of India, 1868, Pt. 1, p. 374.] X

(2) Exemptions of Acts of Indian Legislature and certain other publications from operation of Act.

No. 5793, dated the 30th December, 1870.—Under S. 21 of Act XXV of 1867 (*an Act for the regulation of Printing Presses and Newspapers, for the preservation of copies of books printed in British India, and for the registration of such books*) the Governor-General in Council is pleased to exempt from the operation of the said Act all reprints and translations, without comment or annotation, of Acts of the several Indian Legislatures published in British India.

(See Gazette of India, 1870. Pt. 1, p. 852). Y

No. 5604, dated the 21st Decemer, 1871.—By virtue of the power vested in the Governor-General in Council by S. 21 of Act XXV of 1867, entitled "An Act for the regulation of Printing Presses and Newspapers, for the preservation of copies of books printed in British India, and for the registration of such books," His Excellency in Council is pleased to declare that the following publications are exempted from the provisions of the said Act:—

[1. *Reprints of books without additions or alterations, and without new notes or commentaries*].

N.B.—Cancelled by Notn. No. 3276, dated 16th Aug. 1872. See *infra*. Z

I.—"Power to exempt....Act"—(Concluded).

2. Acts of the Legislative Councils without notes or commentaries.
3. Price lists and tradesmen's circulars.
4. Catalogues of books and other articles, auctioneers' notices and advertisements.
5. Play bills, comprising advertisements of theatrical and musical entertainments.
6. Decisions of Courts of law without notes or commentaries.
7. Petitions and appeals addressed to constituted authority under the provisions of law.
8. Testimonials of private individuals or public officers.
9. Annual reports of schools, banks, societies, and firms.
10. Almanacs and Calendars.
11. Labels affixed to articles of commerce.

(See Gazette of India, 1871, Pt. 1, p. 979.) **V**

[NOTE.—Withdrawal of exemption of reprints of books. *No. 3276, dated the 16th August, 1872.*—Cl. 1 of the notification of this department, No. 5604, dated the 21st December, 1871, exempting from the provisions of Act XXV of 1867 "Reprints of books without additions or alterations, and without new notes or commentaries," is hereby cancelled.] **W**

All such reprints will, in future, be registered in accordance with the provisions of the Act.

(See Gazette of India, 1872, Pt. 1, p. 777.)

(3) **Exempting books acquired by Government for educational purposes from Registration Fees.**

No. 4823, dated the 21st October, 1869.—By virtue of the power vested in the Governor General in Council by S. 21 of Act XXV of 1867, entitled "An Act for the Regulation of printing presses and newspapers, for the preservation of copies of books printed in British India, and for the registration of such books," His Excellency in Council is pleased to exempt from the operation of the clause in S. 18 of the said Act, which requires the payment of the sum of two rupees to the officer keeping the catalogue of books, all such books as become the property of Government for educational purposes.

(See Gazette of India, 1869, Pt. 1, p. 400). **X**

22. [*Continuance of parts of Act.*] *Rep. Act X of 1890, S. 7.*

23. [*Commencement.*] *Rep. Act XIV of 1870.*

THE PRESS AND REGISTRATION OF BOOKS ACT, 1867.

INDEX.

Note 1:—The thick figures at the end of each line refer to the pages of this volume and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2:—S in Brevier Roman denotes the sections.

A

Act XXV of 1867—Statement of objects and reasons, *A*, **5**.

Proceedings in Council, *B*, **5**.

Scope of—Places where, declared in force, *C*, **5**, **6**.

Scope and nature of, *D*, **6**.

G.O. *re* exemption of official publications from provisions of, XXV of 1867, *X*, **30**.

G.O. *re* exemption of Acts of Indian Legislature and certain other publications from operation of, XXV of 1867, *Y*, *Z*, *V*, *W*, **30**, **31**.

Governor General of India in Council, power of, to exclude any class of books from operation, of S. 21, **30**, **31**.

Imperial Acts.

Act XX of 1847, Book of Registry kept under—Application of Act, S. 18, **23**.

B

Bengal, Rules under S. 20, *R*, **24—27**.

Bombay, G.O. directing places at which and the officer to whom the delivery of books shall be made by printers in, *D*, **18**.

Rules under S. 20, *S*. **27**.

Book, Interpretation of the term, S. 1, **7**.

Books, Registration of, published by Government, *G*, **7**.

Particulars to be printed on, S. 3, **8—10**—Analysis of S. 3, *M*, **8**—Application of S. 3, *M*, **9**—Correct interpretation of rule in S. 3, *O*, **9**—Object of rule in S. 3, *P*, **9**—Rule contained in S. 3 not complied with, effect of, *Q*, **9**—Scope and intention of S. 3, *R—V*, **9**—Ss. 3 and 12, scope of, *Y*, **10**—Meaning of publisher in Ss. 3 and 12, *Z*, **10**.

Copies of, printed after commencement of Act to be delivered gratis to Government, S. 9, **17**, **18**.

Delivery of, Part—III, Ss. 9—11, **17—19**.

Officers to whom, are to be delivered under S. 9, *C*, **18**.

G.O. directing places at which and the officers to whom the delivery of, shall be made by printers in Bombay, *D*, **18**.

United Provinces of Agra and Oudh—Magistrates of District to receive copies of all, printed or lithographed, *E*, **18**.

Registration of, Part V, Ss. 18, 19, **22**, **23**.

Books—(Concluded).

Registration of memoranda of,—Particulars, S. 18, **22**, **23**—Effect of registration, *ibid.*

Catalogue of, where to be kept—Assam and Burma, *O*, **23**.

United Provinces of Agra and Oudh, *P*. **23**.

Governor-General of India in Council, power to exclude any class of books from operation of Act, S. 21, **30**, **31**.

Exempting, acquired by Government for educational purposes from registration fees, *G. O.*, *X*, **31**.

British India, Interpretation of the term, S. 1. **7**.

Burden of proof, Defamation by Newspaper—Liability of printer and publisher—*F*, **13**.

Sec. 7 throwing *onus* on accused, *P*, *Q*, **15**.

Burma, G.O. *re* disposal of copies, *E*, **1**—**19**.

Rules under S. 20, *T*, **27**, **28**.

C

Calcutta High Court, Expunging of entries—Jurisdiction, *Q*, **23**.

Catalogue, of books, where to be kept—Assam and Burma, *O*, **23**, United Provinces of Agra and Oudh, *P*, **23**.

Central Provinces, Rules under S. 20, *V*, **29**.

Copies, of declarations—Inspection and supply of, S. 6, **13**.

Receipt for, delivered under S. 9, S. 10, **19**.

of books, printed after commencement of Act to be delivered gratis to Government, S. 9, **17**, **18**.

Disposal of, delivered under S. 9, S. 11, **19**—Burma, *E*, **1**—**19**, United Provinces of Agra and Oudh, *F*, **19**.

Copyright, Whether infringed by translation, *F*, **7**.

Cr.P.C., *1882*, S. 439—Revisional powers of High Court, *I*, **20**.

D

Declaration, Made under the Act—Effect of—Declarant taking no part in the management of press—Publication of seditious book at press—Declarant having no knowledge of sedition or no intention to publish it, *C*, **11**, **12**.

Authentication of, S. 6, **13**.

Deposit, *Ibid.*

Inspection and supply of copies, S. 6, **13**.

Keeper of printing press to make, S. 4, **10**—**12**.

Change of place of printing press—New, *A*, **10**.

Offence of keeping printing press without making, if triable summarily,—Necessity for a new, under S. 4 on change of place of printing, *V*, **10**.

Stamp duty in United Provinces, *G*, **13**.

Office copy of, to be *prima facie* evidence, S. 7, **14**—**16**,—S. 7 applies to what proceedings, *I*, **14**.

by printer—Liability of printer, *O*, **15**.

Effect of, made under S. 7 as printer—Evidence—Presumption, *R*—*Z*, *A*, **15**, **16**.

New, by persons who had signed, and subsequently ceased to be printers and publishers, S. 8, **16**.

Authentication and filing, *ibid.*

Inspection and supply of copies, *ibid.*

Putting copy in evidence, *ibid.*

Defamation, by Newspaper—Liability of printer and publisher, *F*, **13**.

E

Evidence, Office copy of declaration to be *prima facie*, S. 7, **14–16.**

Effect of declaration made under S. 7 as printer—Presumption, *R—Z*, *A*, **15, 16.**

F

Fines, Recovery of forfeitures and disposal thereof and of, S. 17, **21, 22.**

G. O. *re* fines in United Provinces of Agra and Oudh, *L*, **22.**

G

Gender, Masculine including females, S. 1, **7.**

Government, Registration of books published by, *G*, **7.**

Copies of books printed after commencement of Act to be delivered gratis to, S. 9, **17, 18.**

Governor General of India in Council, Power to exclude any class of books from operation of Act, S. 21, **30, 31.**

H

High Court, Revisional powers of, *I*, **20.**

I

Infringement, Copyright whether infringed by translation, *F*, **7.**

J

Jurisdiction, Calcutta High Court--Expunging of entries, *Q*, **23.**

L

Local Government, Interpretation of the term, S. 1, **8.**

Disposal of Copies—Delivered under S. 99, S. 11, **19.**

Power to make rules—Publication, S. 20, **24—30.**

M

Magistrates, Interpretation of the term, S. 1, **7.**

Memoranda, Registration of, books—Particulars, S. 18, **22, 23.**

Publication of, registered, S. 19, **23.**

N

Newspapers, Of,—Part II, Ss. 3—8, **8—16.**

Particulars to be printed on, S. 3, **8—10**—Analysis of S. 3, *M*, **8**—Application of S. 3, *M*, **9**—Correct interpretation of rule in S. 3, *O*,**9**—Object of rule in S. 3, *P*, **9**—Rule contained in S. 3, not complied with, effect of, *Q*, **9**—Scope and intention of, S. 3, *R—V*, *9*—Ss. 3 and 12, scope of, *Y*, **10**—Meaning of publisher in Ss. 3 and 12, *Z*, **10.**

Name of Printer and Publisher not printed as such—Effect, *W*, *X*, **9, 10.**

Rules as to publication of printed periodicals containing public news, S. 5, **12—13**—Scope of S. 5, *B—E*, **12.**

Defamation by—Liability of printer and publisher, *F*, **13.**

Liability of printer or publisher for seditious matter appearing in, *J*, **14.**

Number, Singular including plural, S. 1, **7.**

O

Office copies, of declarations to be *prima facie* evidence, S. 7, **14—16**—S. 7 applies to civil and criminal proceedings, *I*, **14.**

P

Penal Code, S. 124-A—Sedition—Intention, *C*, **11**, **12**.

Ss. 484, 486—Offence—Penalty, *I*, **20**.

Ss. 499, 500—Defamation by newspaper—Liability of printer and publisher—Presumption—Burden of Proof, *F*, **13**.

Penalty, see Part IV, Ss. 12—17, **19**—**22**.

for printing contrary to rule in S. 3, S. 12, **19**, **20**.

Scope of, S. 12, *G*, *H*, **19**.

for keeping press without making declaration required by S. 4, S. 13, **20**.

for making false statement, S. 14, **20**

for printing or publishing periodicals without conforming to rules, S. 15, **20**.

for not delivering books or not supplying printer with maps, S. 16, **21**.

Recovery of forfeiture and disposal thereof and of fines, S. 17, **21**, **22**.

Printer, responsibility of,—Publication of seditious matter—Want of knowledge or intention or absence not a good defence, *A*—*N*, **14**.

Declaration by,—Liability of, *O*, **15**.

Effect of declaration made under S. 7 as, evidence, *R*—*Z*, *A*, **16**.

Printer and Publisher, Names of, not printed as such, *W*, **9**.

Rules as to publication of printed periodicals containing public news, S. 5, **12**, **13**.

Defamation by newspaper—Liability of—, *F*, **13**.

Liability of, for seditious matter appearing in a newspaper, *J*, **14**.

Printing Presses, of—Part II, Ss. 3—8, **8**—**16**.

Change of place of—New declaration, *A*, **10**.

Offence of keeping without making, required declaration if triable summarily—Necessity for a new declaration under S. 4 on change of place of printing, *B*, **10**.

Keeper of, to make declaration, S. 4, **10**—**12**.

Declaration under the Act—Effect—Declarant taking no part in management—Publication of seditious book - Declarant having no knowledge of sedition and having no intention of publishing it, *C*, **11**, **12**.

Rules as to publication of printed periodicals containing public news, S. 5, **12**, **13**, —Scope of S. 5, *B*—*E*, **12**.

Publication, of memoranda registered, S. 19, **23**.

Publication of rules made by Local Government under S. 20, **24**—**30**.

R

Receipt, for copies delivered under S. 9, S. 10, **19**.

Recovery, of forfeitures and disposal thereof and of fines, S. 17, **21**, **22**.

Registration, of memoranda of books—Particulars, Ss. 18, 22, 23—Effect of, *Ibid.*

of books published by Government, *G*, **7**.

of books, Part V, Ss. 18, 19, **22**, **23**.

Rules, as to publication of printed periodicals containing public news, S. 5, **12**, **13**.
Local Government—Power to make rules—Publication, S. 20, **24—30**.
Rules under S. 20—Bengal, *R*, **24—27**.
" —Bombay, *S*, **27**.
" —Burma, *T*, **27**, **28**.
" — United Provinces of Agra and Oudh, *U*, **29**.
" —Central Provinces, *V*, **29**.
" —Other places, *W*, **30**.

S

Sedition, Penal Code, S. 124-A—Intention, *C*, **11**, **12**.
Publication of seditious matter—Want of knowledge or intention or absence not a good defence, *A—N*, **14**.
Liability of printer or publisher for seditious matter appearing in newspaper, *J*, **14**.
Summary trial, Offence of keeping printing press without making required declaration if triable summarily, *B*, **10**.

T

Translation, Copyright whether infringed by, *F*, **7**.

U

United Provinces of Agra and Oudh, G.O., *re* registration of books published by Government, *G*, **7**.
Stamp-duty on declaration in, *G*, **13**.
Magistrate of District to receive copies of all books printed or lithographed, *E*, **18**.
G. O., *re* disposal of copies, *F*, **19**.
G. O., *re* fines in, *L*, **22**.
Rules under S. 20, *U*, **29**.

W

Words and phrases, Book, meaning of, S. 1, **7**.
British India, S. 1, **7**.
Magistrate, S. 1, **7**.
Local Government, S. 1, **8**.
"Publisher" in Ss. 3 and 12.—Meaning of, *Z*, **10**.

THE LAWYER'S COMPANION SERIES.

THE

INDIAN OFFICIAL SECRETS ACT, 1889.

(ACT XV OF 1889).

(AS AMENDED BY ACT V OF 1904).

(WITH THE CASE-LAW THEREON)

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THE INDIAN OFFICIAL SECRETS ACT, 1889.

TABLE OF CASES NOTED IN THIS ACT.

		PAGE
1 L B R 133 (138, 139) ...	Aung Thein v. Crown ...	7, 8

THE INDIAN OFFICIAL SECRETS ACT, 1889

ACT XV OF 1889[1].

[*17th October, 1889.*]

(AS AMENDED BY ACT V OF 1904).

An Act to prevent the Disclosure of Official Documents and information.

WHEREAS it is expedient to prevent the disclosure of official documents and information ; It is hereby enacted as follows :—

Title, extent and application.

1. (1) This Act may be called the Indian Official Secrets Act, 1889 ; and

(2) it extends to the whole of British India, and applies—

(*a*) to all subjects of His Majesty within the dominions of Princes and States in India in alliance with His Majesty, and

(*b*) to all native Indian subjects of His Majesty without and beyond British India.

(Notes).

1.—"Act XV of 1889."

(1) **Statement of Objects and Reasons.**

For——as regards Act XV of 1889. See Gazette of India, 1889, part V p. 206. **A**

For——,——Act V of 1904, [Indian Official Secrets (Amendment) Act]. See Gazette of India, 1903, part V, p. 464. **B**

(2) **Proceedings in Council.**

For ——regarding Act XV of 1889, See Gazette of India, part VI, pp. 167, 176. **C**

For——regarding Act V of 1904, See *Ibid.* 1903, part VI, pp. 156, 188 and 198. **D**

For——regarding Act V of 1904, see *Ibid.* 1904, part VI, pp. 14 and 27. **E**

(3) **Report of the Select Committee.**

For——regarding Act V of 1904, see Gazette of India, 1904, p. 13. **F**

(4) **Places where Act has been declared to be in force.**

Act XV of 1889 has been declared in force in Upper Burma [Except Shan States] by the Burma Laws Act, 1898 (XIII of 1898). **G**

Act XV of 1889 has been declared in force in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890). **H**

Act XV of 1889 has been declared in force in Santhal Pargunas by S. 3 of the Santhal Pargunas Settlement Regulation (III of 1877) as modified by Santhal Pargunas Justice and Laws Regulation (IV of 1899). **I**

1.—"Act XV of 1889"—(Concluded).

Act V of 1904 extends to Upper Burma, *proprio vigore.* J

(5) **Legislative change.**

HIS MAJESTY.

The expression——has been substituted throughout this Act for the expression "Her Majesty" by S. 6 of the Indian Official Secrets Amendment Act (V of 1904). K

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

(1) any reference to a place belonging to His Majesty includes a place belonging to any department of the Government, whether the place is or is not actually vested in His Majesty:

(2) expressions referring to communications include any communication, whether in whole or in part, and whether the document, sketch, plan, model or information itself or the substance or effect thereof, only be communicated:

(3) "document" includes part of a document:

(4) "model" includes design, pattern and specimen:

(5) "sketch" includes any photograph or other mode of representation of any place or thing:

(6) "office under His Majesty" includes any office or employment in or under any department of the Government: and

(7) "civil affairs" means affairs.

(*a*) affecting the relations of His Majesty's Government or of the Governor General in Council with any foreign State [1], or

(*b*) affecting the relations of the Governor General in Council with any Native State in India, or relating to the public debt or the fiscal arrangements of the Government of India or any other important matters of State, where these affairs are of such a confidential nature that the public interest would suffer by their disclosure.

(Notes).

Legislative changes.

The word "and" between clauses (5) and (6) was repealed (See S. 2, Act V of 1904). L

The word "and" at the end of cl. (6); and cl. (7) were added to this section. (*Ibid.*) M

1.—"Foreign State."

Foreign State. definition of.

"Foreign State" means a State to which, for the time being, the Extradition Acts, 1870 and 1873, apply: [S. 2 (*c*) of the Indian Extradition Act (XV of 1903).] N

Disclosure of information 1.

3. (1) (*a*) Where a person for the purpose of wrongfully obtaining information—

(*i*) enters or is in any part of a place belonging to His Majesty, being a fortress, arsenal, factory, dockyard, camp, ship or other like place, in which part he is not entitled to be ; or,

(*ii*) when lawfully or unlawfully in any such place as aforesaid, or in any office belonging to His Majesty, either obtains or attempts to obtain any document, sketch, plan, model or knowledge of any naval, military or civil affairs of His Majesty which he is not entitled to obtain, or any copy of such document, sketch, plan or model or takes or attempts to take without lawful authority any sketch or plan ; or,

(*iii*) when outside any fortress, arsenal, factory, dockyard or camp belonging to His Majesty, takes or attempts to take without authority given by or on behalf of His Majesty any sketch or plan of that fortress, arsenal, factory, dockyard or camp; or,

(*b*) where a person knowingly [2] having possession of, or control over, any such document, sketch, plan, model or knowledge as has been obtained or taken by means of any act which constitutes an offence against this Act, at any time wilfully and without lawful authority communicates or attempts to communicate the same to any person to whom the same ought not, in the public interest, to be communicated at that time, or

(*c*) where a person after having been entrusted in confidence by some officer under His Majesty with any document, sketch, plan, model or information relating to any such place as aforesaid, or to the naval, military or civil affairs of His Majesty, wilfully and in breach of such confidence communicates the same when in the public interest it ought not to be communicated, he shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both ;

(2) Where a person commits any act specified in clauses (i), (ii) and (iii) of sub-section (1), sub-head (*a*), without lawful authority or permission (the proof of which authority or permission shall

be upon him), the Court may presume that he has committed such act for the purpose of wrongfully obtaining information: and

(3) Where a person having possession of any document, sketch, plan, model or information relating to any fortress, arsenal, factory, dockyard, camp, ship, office or other like place belonging to His Majesty, or to the naval, military or civil affairs of His Majesty, in whatever manner the same has been obtained or taken, at any time wilfully communicates the same to any person to whom he knows the same ought not, in the public interest, to be communicated at that time, he shall be liable to the same punishment as if he committed an offence under the foregoing provisions of this section:

(4) Where a person commits any act declared by this section to be an offence, he shall, if he intended to communicate to a foreign State any information, document, sketch, plan, model or knowledge obtained or taken by him, or entrusted to him as aforesaid, or if he communicates the same to any agent of a foreign State, be punished with transportation for life or for any term not less than five years, or with imprisonment for a term which may extend to two years.

(Notes).

Legislative changes.

In this section the following alterations have been made.

(I) In sub-sec. (1), sub-head (*a*), clause (1), the word "office" is omitted. [See S. 3 (*a*), Act V of 1904]. **O**

(II) In clause (ii) of the same sub-section and sub-head :—

(i) after the word "aforesaid," the words '*or in any office belonging to His Majesty*' have been inserted.

(ii) After the words "obtains," "obtain" and "takes" the words '*or attempts to obtain,' or any copy of any such document, sketch, plan or model, ' or attempts to take,*' respectively have been inserted.

(iii) for the word "anything," the words 'any naval, military, or civil affair of His Majesty," have been substituted. [See S. 3 (*b*), Act V of 1904] **P**

(III) The words "in the public interest" in S. 3 (1), (*b*) and (3) have been substituted for the words "in the interest of the State." [See S. 3 (*e*), Act V of 1904]. **Q**

(IV) In Sub-head (*c*) of the same section, and in sub-section (2) [now sub-section (3)], for the words "naval or military" the words "naval, military or civil," have been substituted. [See S. 3 (*c*), Act V of 1904]. **R**

(V) Sub-S. (2) has been inserted and the original sub-sections (2, and (3), re-numbered into as (3) & (4). [See 3 (*d*), Act V of 1904]. **S**

1.—"Disclosure of information."

Ss. 3 and 4—Disclosure of Government Departmental examination papers.

The disclosure of Government departmental examination papers may be an offence under the Indian Official Secrets Act. 1 L.B.R. 133. **T**

2.—"Knowingly."

"Knowingly," scope of the term.

(*a*) The word knowingly applies to knowledge that an act described in S. 4 (1) has been committed. 1 L.B.R. 138 (139). **U**

(*b*) But it cannot be interpreted as being equivalent to "not unconsciously" or "not innocently." (*Ibid.*) **V**

(*c*) If it could be interpreted in this way, the legislature might have added such words as "or has *reason to believe* that the knowledge has been so obtained." But there are merely the words implying actual knowledge, or, at least, knowledge of such facts as could leave no reasonable doubt in the mind of a person of ordinary intelligence that an offence under S. 4 (1) has been committed. (*Ibid.*) **W**

Breach of official trust.

4. (1) Where a person, by means of his holding or having held an office under His Majesty, has lawfully or unlawfully either obtained possession of or control over any document, sketch, plan, or model, or acquired any information [1], and at any time corruptly or contrary to his official duty communicates or attempts to communicate that document, sketch, plan, model or information to any person to whom the same ought not, * * * in the public interest, to be communicated at that time, he shall be guilty of a breach of official trust.

(2) A person guilty of a breach of official trust shall—

(*a*) if the communication was made or attempted to be made to a foreign State, be punished with transportation for life or for any term not less than five years, or with imprisonment for a term which may extend to two years; and

(*b*) in any other case be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

(3) This section shall apply to a person holding a contract with any department of the Government, or with the holder of any office under His Majesty as such holder, where such contract involves an obligation of secrecy, and to any person employed by any person or body of persons holding such a contract, who is under a like obligation of secrecy, as if the person holding the contract and the person so employed were respectively holders of an office under His Majesty.

(Notes).

Legislative change.

In S. 4, sub-sec. (1), the words "in the interest of the state or otherwise", have been omitted. (S. 4, Act V of 1904.) X

1.—"Any information."

(1) Scope of section.

S. 4 (1) refers to "any information," terms as wide as possible, and terms, which in themselves would include such documents as examination papers. 1 L.B.R. 133 (134). Y

(2) Strict proof.

There should be strict proof of the essential fact required to constitute an offence under S. 411. 1 L.B.R. 133 (138). Z

It may not be necessary to demonstrate the particular person who by means of his office obtains and communicates information; but, before an act described in S. 4 (1) can be said to be proved, there must at least be reasonable certainty that the information could not have been obtained by other means. 1 L.B.R. 133 (138). A

(3) Ss. 3 and 4—Disclosure of Government Departmental Examination Papers.

See 1 L.B.R. 133 under S. 3, *supra*. B

Certain offences under Act declared cognizable.

5. (1) Notwithstanding anything in the Code of Criminal Procedure, 1898, every offence against this Act committed in relation to any fortress, arsenal, factory, dockyard, camp or ship belonging to His Majesty, or in relation to the naval or military affairs of His Majesty, shall, for the purposes of the said Code, be deemed to be cognizable:

Provided that a person accused of any such offence shall not be released on bail unless on the order of a Magistrate of the first class.

(2) Every other offence against this Act shall be non-cognizable.

(Note).

Legislative change.

For S. 5 of the Act of 1889, Ss. 5, 6, and 7 have been substituted. (S. 5, Act V of 1904). C

Procedure after arrest on charge of certain offences punishable under Act.

6. (1) Any person, being a public servant as defined in the Indian Penal Code, may arrest any person who in his view commits any of the offences described in section 5, sub-section (1), and any such person, or any police-officer who has arrested any person on a charge of any such offence, and any police-officer to whom any person arrested on any such charge has been made over,

shall take or send him before the officer for the time being in command or charge of the fortress, arsenal, factory, dockyard, camp or ship, or of the nearest military station or before a Magistrate of the first class.

(2) Where any person has been taken or sent before the commanding or other officer in accordance with sub-section (1), such officer may, if he thinks fit, discharge such person, but, if he does not discharge him, shall without unnecessary delay, take or send him to the nearest police-station or to any Magistrate of the first class.

(3) Where any person has been taken or sent to a police-station or to a Magistrate under sub-section (2), the provisions of the Code of Criminal Procedure, 1898, shall, save as otherwise provided by section 7, apply to him as though he had been taken to such police-station or Magistrate without being taken or sent before the commanding or other officer. V of 1898.

(Note).

Legislative change.

This section has been substituted by S. 5, Act V of 1904. **D**

Restriction on trial of offences.

7. (1) No Magistrate of the second class shall have jurisdiction to try any person for an offence against this Act.

(2) No Court shall proceed to the trial of any person for an offence against this Act, except with the consent of the Local Government or the Governor-General in Council.

(Note).

Legislative change.

This section has been substituted by S. 5, Act V of 1904. **E**

THE INDIAN OFFICIAL SECRETS ACT, 1889.

INDEX.

Note 1.—The thick figures at the end of each line refer to the pages of this Act and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2.—S in Brevier Roman denotes the section.

A

Act, XV of 1889, places where, has been declared to be in force, *G—J*, **3**, **4**.

B

Breach of official trust—Penalty, S. 4, **7**, **8**—Scope of S. 4, *Y*, **8**.

C

"*Civil affairs*," Meaning of the expression, S. 2, **4**.

Cr.P.C., *1898*, Certain offences under Act XV of 1889, declared cognizable, notwithstanding anything in, S. 5, **8**.

See "Procedure."

D

Definition of the term "document," S. 2, **4**.

of the term "model," S. 2, **4**.

of the term "sketch," S. 2, **4**.

meaning of the expression "office under His Majesty," S. 2. **4**.

meaning of the expression "Civil affairs," S. 2, **4**.

of the term "Foreign State," *N*, **4**.

Disclosure, of information—Penalty, S. 3, **5—7**.

of Government departmental examination papers, *T*, **6**.

"*Document*," Scope of the term, S. 2, **4**.

E

Examination papers, Disclosure of Government departmental, *T*, **6**.

F

Foreign State, Definition of, *N*, **4**

G

Government, Disclosure of, departmental examination papers, *T*, **6**.

I

Information, Disclosure of,—Penalty, S. 3, **5—7**.

M

"*Model*," Scope of the term, S. 2, **4**.

O

Offences, under S. 4 of the Act—Strict proof necessary, *Z*, *A*, **8**.
certain, under the Act declared cognizable, S. 5, **8**.
Procedure after arrest on charge of certain offences punishable under the Act, S. 6, **8**, **9**.
Restriction on trial of, S. 7, **9**.
"*Office under His Majesty*," Scope of the expression, S. 2, **4**.
Official trust, Breach of,—Penalty, S. 4, **7**, **8**—Scope of S. 4, *Y*, **8**.

P

Penal Code, see PUBLIC SERVANT.
Penalty, for disclosure of information, S. 3, **5**—**7**.
for breach of official trust, S. 4, **7**, **8**—Scope of S. 4, *Y*, **8**.
Procedure after arrest on charge of certain offences punishable under the Act, S. 6, **8**, **9**.
Proof, Strict proof necessary to constitute offence under the Act, *Z*, *A*, **8**.
Public servant, defined in I.P.C., arresting person committing offences punishable under the Act, S. 6, **8**, **9**.

R

Restriction on trial of offences, S. 7, **9**.

S

"*Sketch*," Scope of the term, S. 2, **4**.

T

Trial, Restriction on, of offences, S. 7, **9**.

W

Words and phrases, meaning of "document," S. 2, **4**.
meaning of "model," S. 2, **4**.
meaning of "sketch," S. 2, **4**.
meaning of "office under His Majesty," S 2. **4**.
meaning of "Civil affairs," S. 2, **4**.
meaning of "Foreign State," *N*, **4**.
Scope of the term "knowingly" in S. 3, *U*—*W*, **7**.

THE LAWYER'S COMPANION SERIES.

THE PREVENTION OF SEDITIOUS MEETINGS ACT, 1907

(ACT VI OF 1907).

(WITH THE CASE-LAW THEREON)

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THE PREVENTION OF SEDITIOUS MEETINGS ACT, 1907.

TABLE OF CASES DIGESTED UNDER THIS ACT.

			PAGE
		I. L. R. Allahabad Series.	
17 A 166	...	Queen-Empress v. Sri Lal ...	8
		I. L. R. Bombay Series.	
22 B 112 (134, 151) ..		Queen-Empress v. Bal Gangadhar Tilak ...	4, 6, 7
		I. L. R. Calcutta Series.	
19 C 35 (44)	...	Queen-Empress v. Jogendra Chunder Bose ...	6

THE PREVENTION OF SEDITIOUS MEETINGS ACT, 1907.

(ACT VI OF 1907) [1].

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 1st November, 1907.)

An Act to make better provision for the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity.

WHEREAS it is expedient to make better provision for the prevention of public meetings likely to promote sedition [2] or to cause a disturbance of public tranquillity [3]; It is hereby enacted as follows:

(Notes).

1.—"Act VI of 1907."

(1) Object of the Act—Reason for its passing.

By reason of the prevalence in the Punjab and Eastern Bengal and Assam of public meetings which promoted sedition and led to disturbances of the public tranquillity the Governor General was constrained, in the interests of law and order, to make and promulgate, under section 23 of the Indian Councils Act, 1861, Ordinance No. I of 1907, with the object of regulating the holding of meetings in those Provinces. The period during which that Ordinance has the force of law will expire on the 10th November. The occurrences of the last six months have convinced the Government of India that it is necessary, for the preservation of the public peace and for the protection of the law-abiding members of the community, to incorporate in the general law an effective measure for the prevention of seditious meetings and to take power to bring its provisions into operation in any part of India as occasion may require. The Bill now published has been prepared for this purpose. See Statement of Objects and Reasons. **A**

(2) Object of bill.

The object of the Bill is to meet evils which may occur in exceptional places at exceptional times. See Proceedings of the Council, dated 25th October, 1907. **B**

(3) Bill—Aim.

The Bill is aimed at the inaugurators of dangerous sedition, not at political reform, not at the freedom of speech of the people of India. See Proceedings Council, 1st November, 1907. **C**

2.—"Sedition."

Sedition—Using seditious language regarding the Government established in India.

(*a*) Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards His Majesty or the Government established by law in British India, shall be punished with transportation for life or any shorter term, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.—The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2.—Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3.—Comments expressing disappropriation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section. [S. 124-A, The Indian Penal Code.]

(*b*) In *R.* v. *Sullivan*, *Fitzgerald*, *J.*, defined sedition to be "all practices which have a tendency to disturb public tranquillity, and to lead people to subvert the Government and the laws." 11 Cox. 45, *cited* in 22 B. 112 (161). **D**

(*c*) "The objects of sedition are to create discontent and insurrection, or stir up opposition to Government." (*Ibid.*) **E**

(*d*) "Sedition is further on described as disloyalty in action." (*Ibid.*) **F**

(*e*) "Practices which create discontent and dissatisfaction, or create public disturbance, or bring into contempt or hatred the Government, or the laws and the constitution, are punishable as sedition." (*Ibid.*) **G**

3.—"Public tranquillity."

Offences against the public tranquillity.

For——, see Ch. VIII, I.P.C.

Short title and extent.

1. (1) This Act may be called the Prevention of Seditious Meetings Act, 1907.

(2) It extends [1] to the whole of British India [2], but shall have operation only in such Provinces as the Governor General in Council may from time to time notify in the *Gazette of India*.

(Notes).

1.—"Extends."

(1) Act extended to various places.

In pursuance of S. 1, sub-s. (2) of the Prevention of Seditious Meetings Act (VI of 1907), the Governor General in Council is pleased to notify that the said Act shall have operation in—

The Presidency of Madras.

1.—"Extends"—(Concluded).

The Presidency of Bombay.
The Province of Bengal.
The United Provinces of Agra and Oudh.
The Province of the Punjab.
The Central Provinces.

[See Home Department Notification, Pol. No. 64, dated 13th Jan. 1910.] H

It is notified that the Seditious Meetings Act of 1907 will cease to operate in the Bombay Presidency as the condition there have improved and render the Act no longer necessary.

2.—"British India."

British India.

The words "British India" denote the territories which are or may become vested in Her Majesty by the said Statute 21 and 22 Victoria, Ch. 106 entitled "An Act for the better Government of India. [See S. 15, Penal Code.] I

"British India" shall mean all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor General of India, or through any Governor or other officer subordinate to the Governor General of India." [S. 3 (7), General Clauses Act, 1897.] J

Power of Local Government to notify proclaimed areas.

2. (1) The Local Government may, by notification in the local official Gazette, declare the whole or any part of a Province, in which this Act is for the time being in operation, to be a proclaimed area.

(2) A notification made under sub-section (1) shall not remain in force for more than six months, but nothing in this sub-section shall be deemed to prevent the Local Government from making any further notifications in respect of the same area from time to time as it may think fit.

Definition.

3. (1) In this Act the expression "public meeting" means a meeting which is open to the public or any class or portion of the public.

(2) A meeting may be a public meeting notwithstanding that it is held in a private place and notwithstanding that admission thereto may have been restricted by ticket or otherwise.

(3) A meeting of more than twenty persons shall be presumed to be a public meeting within the meaning of this Act until the contrary is proved.

Notice to be given of public meetings.

4. (1) No public meeting for the furtherance or discussion of any subject likely to cause disturbance or public excitement or of any political subject or for the exhibition or distribution of any writing or printed matter relating to any such subject shall be held in any proclaimed area—

(*a*) unless written notice of the intention to hold such meeting and of the time and place of such meeting has been given to the District Superintendent of Police or the Commissioner of Police, as the case may be, at least three days previously; or

(*b*) unless permission to hold such meeting has been obtained in writing from the District Superintendent of Police or the Commissioner of Police, as the case may be.

Power of Police to take report.

(2) Any officer of Police, not below the rank of an Inspector, may, by order in writing, depute one or more Police officers or other persons to attend any such meeting for the purpose of causing a report to be taken of the proceedings.

Exception.

(3) Nothing in this section shall apply to any public meeting held under any statutory or other express legal authority or to public meetings convened by a Sheriff or to any public meetings or class of public meetings exempted for that purpose by the Local Government by general or special order.

Power to prohibit public meetings.

5. The District Magistrate or the Commissioner of Police, as the case may be, may at any time by order in writing, of which public notice shall forthwith be given, prohibit any public meeting in a proclaimed area if, in his opinion, such meeting is likely to promote sedition or disaffection [1] or to cause a disturbance of the public tranquillity.

(Note).

N.B.—See notes under *Preamble*.

1.—"Disaffection."

"Disaffection"—Meaning—Synonymous with disloyalty.

(*a*) Although the primary meaning of the word '*disaffection*' is the alienation of attachment, affection or good-will, and the consequent substitution of a contrary feeling of dislike or hatred, yet when used in connection with a people and its Government all standard authorities use the term as synonymous with '*disloyalty*.' See 19 C. 35 (44); 22 B. 112 (134, 151); See the *Century Dictionary and Encyclopædia*. **K**

(*b*) Disaffection means a feeling contrary to affection in other words, dislike or hatred. 19 C. 35 (44). **L**

(*c*) "Disaffection" is defined in the new English Dictionary as "absence or alienation of affection or kindly feeling, dislike hostility, political alienation or discontent, a spirit of disloyalty to the Government or existing authority." 22 B. 112 (134). **M**

1.—"Disaffection"—(Concluded).

(*d*) In Latham's edition of Johnson "disaffection" is defined as "dislike, ill-will, want, of zeal for the Government, want of ardour for reigning prince." 22 B. 112 (134). N

(*e*) In Webster it is defined as "state of being disaffected, alienation or want of affection or goodwill, unfriendliness, disloyalty," with synonymous "dislike, disgust, unfriendliness, ill-will, alienation, disloyalty, hostility." (*Ibid.*) O

(*f*) In Murray's Dictionary—at present the most complete dictionary of the English language so far as it has been published—it is stated that the adjective "disaffected" is almost always employed in a special sense as meaning "unfriendly to the Government or the constituted authority; Disloyal." 22 B. 112 (155, 156). P

(*g*) The noun "disaffection" is defind as "absence or alienation of affection or kindly feeling—dislike—hostility." (*Ibid.*) Q

Specially, "Political alienation or discontent, a spirit, of disloyalty to the Government or existing authority." (*Ibid.*) R

(*h*) An attempt to excite feelings of disaffection to the Government is thus equivalent to an attempt to produce hatred of Government as established by law, to excite political discontent and alienate the people from their allegiance. 22 B. 112 (156). S

(*i*) This is an offence under English Law. (*Ibid.*) T

(*j*) In Stephen's Criminal Law the publication of a libel with seditious intent is classed as a misdemeanour, and seditious intention is thus defined:—

"A seditious intention is an intention to bring into hatred or contempt, or to excite disaffection against the person of Her Majesty, her heirs or successors, or the Government and constitution of the United Kingdom as by the law established ..... or to raise discontent or disaffection amongst Her Majesty's subjects." (*Ibid.*) U

(*k*) Disaffection, as judicially paraphrased, is a positive political distemper, and not a mere absence or negation of love or good-will. 22 B. 112 (162). V

(*l*) It is a positive feeling of aversion which is akin to disloyalty, a defiant insubordination of authority, or when it is not defiant, it secretly seeks to alienate the people, and weaken the bond of allegiance, and prepossess the minds of the people with avowed or secret animosity to Government, a feeling which tends to bring the Government into hatred or contempt by imputing base or corrupt motives to it, makes men indisposed to obey of support the laws of the realm, and promotes discontent and public disorder. (*Ibid.*) W

Penalties.

6. (1) Any person concerned in the promotion or conduct of a public meeting held in a proclaimed area contrary to the provisions of section 4 shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Any public meeting which has been prohibited under section 5 shall be deemed to be an unlawful assembly within the meaning of Chapter VIII of the Indian Penal Code and of Chapter IX of the Code of Criminal Procedure, 1898. XLV of 1860. V of 1898.

Penalty for delivery of speeches in public places.

7. Whoever, in a proclaimed area, in a public place [1] or a place of public resort, otherwise than at a public meeting held in accordance with, or exempted from, the provisions of section 4, without the permission in writing of the Magistrate of the District or of the Commissioner of Police, as the case may be, previously obtained, delivers any lecture, address or speech on any subject likely to cause disturbance or public excitement or on any political subject, to persons then present, may be arrested without warrant and shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

(Note).

1.—"In a public place."

Public place—Scope of expression.

A place to which the public has no right of access by permission, usage or otherwise is not a public place, although the place may be in sight of the public. 17 A. 166. **X**

Repeal.

8. (1) The Regulation of Meetings Ordinance, 1907, is hereby superseded.

Ordinance No. I of 1907.

(2) Nothing contained in this Act shall affect—

the previous operation of the said Ordinance or anything duly done or suffered thereunder; or

any obligation or liability incurred under the said Ordinance; or

any punishment incurred in respect of any offence committed against the said Ordinance; or

any investigation or legal proceeding in respect of any such obligation, liability or punishment as aforesaid;

and any such investigation or legal proceeding may be instituted or continued and any such punishment may be imposed as if the said Ordinance had not been superseded or had not expired.

Duration of Act 1.

9. This Act shall continue in force until the expiration of three years next after the passing thereof.

(Note).

1.—"Duration of Act."

Continuance of the Act.

Provision has been made for the continuance of this Act until the thirty first day of March 1911. See Act XVII of 1910 *(Appendix)*. **Y**

APPENDIX A.

REPORT OF THE SELECT COMMITTEE.

The following Report of the Select Committee on the Bill to make better provision for the prevention of meetings likely to promote sedition or to cause a disturbance of public tranquillity was presented to the Council of the Governor-General of India for the purpose of making Laws and Regulations on the 25th October, 1907 :

WE, the undersigned Members of the Select Committee to which the Bill to make better provision for the prevention of meetings likely to promote sedition or to cause a disturbance of public tranquillity was referred, have considered the Bill and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

2. In accordance with a suggestion which has been made to us, we have limited the operation of a notification issued under clause 2 to a period of six months, but, at the same time, have empowered the Local Government to issue fresh notifications from time to time as it may think fit.

3. In response to representations which we have received, we have altered the definition of "public meeting" in clause 3 by striking out from sub-clause (1) of that clause everything following the words "any class or portion of the public." The passage omitted has been modified and transferred by us in its modified form to sub-clause (1) of clause 4. The effect of the changes we have made is twofold :

(1) In the first place the presumption in sub-clause (3) of clause 3 is limited and confined to the public character of the meeting and there is no presumption that any meeting is of an inflammatory character.

(2) The class of public meetings in respect of which notice or permission is required by clause 4 is narrowed and restricted.

4. In clause 4, in addition to the change already indicated, we have substituted the word "three" for the word "seven" as we consider that three days' previous notice of a public meeting will be sufficient.

We have also inserted a sub-clause excepting certain public meetings from the provisions of the clause. The addition has involved a slight consequential amendment in clause 6 (1).

In sub-clause (2) of the same clause we have substituted the word "public" for the word "such."

5. In clause 5 we have introduced the word "public" before the word "meeting" in order to limit the power of prohibition expressly to public meetings. A similar addition has been made in sub-clause (2) of clause 6.

6. In clause 7 we have inserted words in order to show that this clause is not intended to overlap clause 4. We have also omitted from this clause the words relating to writings and printed matter, as we are of opinion that those words give too wide a power.

7. It has been represented to us that there are objections to placing this measure permanently on the Statute Book. We recognize the force of this view, and we have therefore added a clause to the Bill limiting the operation of the measure to a period of three years.

8. The Bill has been duly published in accordance with the order of the Governor-General.

9. We think that the Bill has not been so altered as to require re-publication, and we recommend that it be passed as now amended.

H. ADAMSON.
H. ERLE RICHARDS.
E. N. BAKER.
RASHBEHARY GHOSE.*
G. K. GOKHALE.*

The 24th October 1907.

* Signed subject to minute of dissent appended.

Apart from our objection to the Bill itself, we think that further alterations are necessary in some of the clauses. The definition of "public meeting" in clause 3 is unsatisfactory and should, we think, be abandoned. At any rate, sub-clause (3) of clause 3 should be deleted. In clause 4, we think the words "a political grievance" should be substituted for the words "a political subject." In clause 5, the power of prohibition should be restricted to those public meetings only that are mentioned in clause 4. And in clause 9, the period should be reduced from three years to one year.

RASHBEHARY GHOSE.

G. K. GOKHALE.

APPENDIX B.

Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 and 25 Vict., Cap., 67, and 55 and 56 Vict., Cap., 14).

The Council met at the Viceregal Lodge, Simla, on Friday, the 25th October 1907.

PRESENT:

His Excellency the Earl of Minto, P.C., G.C.M.G., G.M.S.I., G.M.I.E., Viceroy and Governor-General of India, *presiding*.

His Honour Sir Denzil Ibbetson, K.C.S.I., Lieutenant-Governor of the Punjab.

His Excellency General Viscount Kitchener of Khartoum, G.C.B., O.M., G.C.M.G., Commander-in-Chief in India.

The Hon'ble Mr. H. Erle Richards, K.C.
The Hon'ble Mr. E.N. Baker, C.S.I.
The Hon'ble Major-General C.H. Scott, C.B., R.A.
The Hon'ble Sir Harvey Adamson, *Kt.*, C.S.I.
The Hon'ble Mr. J.F. Finlay, C.S.I.
The Hon'ble Mr. J.O. Miller, C.S.I.
The Hon'ble Mr. S. Ismay, C.S.I.
The Hon'ble Tikka Sahib Ripudaman Singh of Nabha.
The Hon'ble Dr. Rashbehary Ghose, C.I.E., D.L.
The Hon'ble Mr. Gopal Krishna Gokhale, C.I.E.
The Hon'ble Mr. T. Gordon Walker, C.S.I.

PREVENTION OF SEDITIOUS MEETINGS BILL.

The Hon'ble SIR HARVEY ADAMSON presented the Report of the Select Committee on the Bill to make better provision for the prevention of meetings likely to promote sedition or to cause a disturbance of public tranquillity. He said:—"My Lord, I may add a few explanatory words to the Report of the Select Committee. We have removed the qualifying words at the end of the first sub-clause of the definition of 'public meeting' to its more appropriate place in clause 4, the effect being to limit the presumption in the last sub-clause of the definition to the significance that a meeting of more than twenty persons shall be presumed to be a meeting which is open to the public until the contrary is proved. As the definition originally ran the presumption also extended to the fact that the meeting was one at which certain subjects were discussed. In removing these words to their appropriate place, we have altered the language so as to make it clear that a meeting which is a private meeting does not become a public meeting merely because some person or persons present happen to discuss political or other kindred subjects.

"It has been represented very strongly to us that much inconvenience will be caused if the requirements of notice or permission are applied indiscriminately to all

public meetings held for specified purposes. For instance, if the provision were construed rigidly, it might be necessary to give notice or obtain permission before holding municipal meetings in a proclaimed area. To meet this objection, we have added words exempting from the provisions as to notice or permission certain classes of meetings and generally any class which the Local Government may by general or special order exempt. To suit public convenience, we have reduced the term of notice from seven days to three. By slightly altering clause 5, we have made it clear that prohibition can be applied only to public meetings. In the clause that relates to the delivery of speeches in public places in proclaimed areas, we have omitted the words relating to the distribution of writing or printed matter, as the power given in respect thereof appeared to be too wide and, in any case, unnecessary. The object of the Bill is to meet evils which may occur in exceptional places at exceptional times. So far as can be judged at present it does not appear to be necessary that a repressive measure for this purpose should remain permanently on the Statute-book. We have accordingly limited the operation of the Billsto three years; and, in order further to clearly show the intention that every executive action taken under the Bill shall lack the element of permanency, we have provided that all notifications declaring places to be proclaimed areas shall, unless specially renewed, expire after a period of six months. Our Hon'ble Colleagues the Hon'ble Dr. Rashbehary Ghose and the Hon'ble Mr. Gokhale have, independent of their general objection to the Bill, dissented in certain particulars from the Report; and their minute of dissent is attached to it."

The Council adjourned to Friday, the 1st November 1907.

SIMLA, T. W. RICHARDSON

The 25th October 1907. *Offg. Secy. to the Govt. of India, Legislative Dept.*

APPENDIX C.

Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts.

1861 and 1892 (24 & 25 Vict., Cap. 67, and 55 & 56 Vict., Cap. 14.)

The Council met at the Viceregal Lodge, Simla, on Friday, the 1st November 1907.

PRESENT:

His Excellency the Earl of Minto, P.C., G.C.M.G., G.M.S.I., G.M.I.E.. Viceroy and Governor-General of India, *presiding*.

His Excellency General Viscount Kitchener of Khartoum, G.C.B., O.M., G.C.M.G., Commander-in-Chief in India.

The Hon'ble Mr. H. Earle Richards, K.C.

The Hon'ble Mr. E. N. Baker, C.S.I.

The Hon'ble Major-General C. H. Scott, C.B., R.A.

The Hon'ble Sir Harvey Adamson, *Kt.*, C.S.I.

The Hon'ble Mr. J. F. Finlay, C.S.I.

The Hon'ble Mr. J. O. Miller, C.S.I.

The Hon'ble Mr. S. Ismay, C.S.I.

The Hon'ble Tikka Sahib Ripudaman Singh of Nabha.

The Hon'ble Dr. Rashbehary Ghose, C.I.E., D.L.

The Hon'ble Mr. Gopal Krishna Gokhale, C.I.E.

The Hon'ble Mr. T. Gordon Walker, C.S.I.

PREVENTION OF SEDITIOUS MEETINGS BILL.

The Hon'ble SIR HARVEY ADAMSON moved that the Report of the Select Committee on the Bill to make better provision for the prevention of meetings likely to promote sedition or to cause a disturbance of public tranquillity be taken into consideration.

The Hon'ble MR. GOKHALE said :—" For many years now it has been a well-established practice of this Council that no important legislation—especially of a controversial character—should be enacted at Simla, but that it should be reserved for the session at Calcutta, where alone the assistance of all Additional Members is available. This practice has behind it the authority of a clear instruction from the Secretary of State. Thirty-two years ago, on the Government of Lord Northbrook passing an important measure at Simla, Lord Salisbury, then Secretary of State for India, deemed it necessary to address a remonstrance to the Governor-General in Council in the following words: ' In providing that laws for India should be passed at a Council consisting not only of the Ordinary Members of the Executive Government, but of Additional Members specially added for the purpose (of whom some have always been unofficial), it was the clear intention of Parliament that in the task of legislation the Government should, in addition to the sources of information usually open to it, be enlightened by the advice and knowledge of persons possessing other than official experience. Of these you were unfortunately deprived in discussing the subject in respect to which the assistance of non-official councillors is of special value.' My Lord, it is a matter for deep regret that the Government of India should have thought it proper to depart from this wise and salutary practice in the present instance. But the absence of most Additional Members from to-day's meeting is not my only ground of complaint against the course adopted by Government. I think it is no exaggeration to say that this Bill has been received throughout the country with feelings of consternation and dismay, and yet it is being rushed through this Council in such hot haste, that practically no time has been allowed to the public to state its objections to the measure. The Hon'ble Sir Harvey Adamson, in introducing the Bill last Friday, observed : ' From the date of its publication in the *Gazette* to the date on which it will be finally considered, an interval of twenty days has been allowed. I am confident that the time is sufficient for a full consideration of the merits of the Bill.' I suppose the Hon'ble Member was indulging in a bit of cynical humour when he said this. Else, My Lord, it is not possible to understand his statement. I presume the object of publication is to give the public affected by the proposed legislation an opportunity to say what it thinks of the measure. This it can only do after it has had time to examine the provisions of the Bill, and such examination must, in fairness to Government, be made in the light of the reasons adduced by the Member in charge in introducing it. Now, my Lord, this Bill was published at Simla on 11th October, and its provisions, as telegraphed from here, appeared in the columns of the daily press of the country on the morning of the 12th. There are only seven or eight towns in the whole of India which have a daily press of their own. Of the others. the more important ones, which are served by these same dailies, have to wait for a day or two. and in some cases, for even three or four or five days, before they get their daily budget of news. The smaller towns have as a rule to content themselves with weekly newspapers only. The Hon'ble Member must therefore allow at least a week's time for anything telegraphed from here to spread all over so vast a country as India. Then, my Lord, the Bill was introduced in this Council only on 18th October, and a telegraphic report of the Hon'ble Member's speech in introducing it appeared in the dailies only on the morning of the 19th. Allowing another week as the very least time required for the speech to penetrate into the interior of the country, it brings us down to 26th October as the earliest date by which the

whole case of the Government may be assumed to have been before the people. After this, some time would be required for deliberation, for the formulation of objections and for these objections to reach the Government ; and even if a month had been allowed for this purpose, it would hardly have sufficed. Meanwhile what happens here ? The Select Committee, to whom the Bill was referred for consideration, meets on 22nd October, concludes its deliberations on 23rd, and makes its report on 24th ! Now, every one knows that once the Select Committee has made its report, the door is closed on all further modifications, and therefore for any expression of public opinion to be of the slightest value in influencing the character or details of a Bill, it must reach the Government before the Select Committee finishes its labours. It is for this reason that the Rules of this Council lay down that ordinarily a Select Committee shall not make its report sooner than three months from the first publication of a Bill in the *Gazette of India*. In the present case, the Select Committee had not the advantage of a single expression of public opinion to assist it ; and even those few telegraphic protests, which had been received by the Government, and of which some of us had received copies independently, were not laid before the Committee. My Lord, in the face of these facts, to speak of having allowed sufficient time to the public for a full consideration of the Bill is to mock public opinion. Better far that the Hon'ble Member had said : ' The Legislature exists in India only to register the decrees of the Executive. The passage of a Bill through the Council is a mere formality, and on occasions like the present an inconvenient formality. We are facing the inconvenience in this case simply because we *must* face it. But the people may as well spare themselves the trouble of making any representations to us. For we have made up our mind and nothing they can possibly say will affect our determination to make this addition to the Statute-book. Moreover, it is not for them to reason why or to make reply. Their only business is to obey.' That the Hon'ble Member is not wholly unconscious of the fact that he has given practically no time to the public for what he calls 'a full consideration of the merits of the Bill may be seen from his providing himself with a second line of defence. He says that though the Bill has been before the public for a few days only, the Ordinance which was promulgated in May last for the Provinces of East Bengal and the Punjab has been before the country for the last five months ; He might as well have said that we had the History of Ireland before us all these years or that we could not be altogether ignorant of what was taking place before our eyes in Russia ;

" My Lord, I can imagine circumstances of such extreme urgency and such extreme gravity as to necessitate the passing of a law of this kind and passing it even in the manner the Government have adopted. Had there been an active and widespread movement of resistance to authority afoot in the country, if breaches of public peace had been frequent, if incitements to violence had been the order of the day, I can understand the Executive wanting to arm themselves with these vast powers of coercion. But, my Lord, can any one truthfully say that such a state of things has arisen in the country ? On the contrary I assert without fear of contradiction, that there is nothing in the circumstances of the land which constitutes even a distant approach to such a situation. It is true that there is widespread discontent throughout the country and very acute discontent in one or two Provinces, and to this discontent is now being added a fresh feeling of resentment—daily growing deeper and stronger—on account of the policy of repression on which the Government have embarked. But of active disaffection there is really very little anywhere and whatever there is, is due to causes which lie almost on the surface, and should therefore be not difficult to understand. The Statement of Objects and Reasons, appended to the Bill, says : ' The occurrences of the last six months have convinced the Government of India that it is necessary for the preservation of the public peace and for the protection of the law-abiding members of the community, to incorporate in the general law an effective measure for the prevention

of seditious meetings and to take power to bring its provisions into operation in any part of India as occasion may require.' And the Hon'ble Member, in introducing the Bill, observed : 'We had hoped that the need for an enactment of this kind would cease before the Ordinance expired, but in this hope we have been disappointed. It has become painfully apparent that persistent attempts continue to be made to promote sedition and to cause such ill-feeling as is calculated to disturb the public tranquillity, and that these attempts are not confined to the two Provinces which came under the scope of the Ordinance.' My Lord, these are serious but vague statements, and I am astonished that the Hon'ble Member has not seen the necessity of supporting them by the testimony of facts. He mentions no cases, no statistics ! one general assertion that persistent attempts continue to be made to promote sedition, and he thinks he has established the need for enacting a drastic law of this kind for the whole country ! With due deference, I submit this is not a fair proceeding and the vast bulk of the people throughout India, who are perfectly law-abiding, have just cause to resent it. Let us examine the Hon'ble Member's contention a little closely. He says, first, that he had hoped that, after the expiry of the Ordinance of May last, it would be unnecessary to renew its policy in the two Provinces in which it was in force, but that in this hope he has been disappointed ; and secondly, that unless that policy is extended to all the other Provinces of India, public tranquillity in those Provinces also would be in danger of being disturbed. Now, what are the facts ? Let us take the Punjab first. In the whole of this Province there has been, as far as I am aware, only one public meeting since the promulgation of the Ordinance. It was held in Delhi, before Delhi was proclaimed, it was attended by both Hindus and Mahomedans, and its object was to express regret at Lala Lajpat Rai's deportation. There has been no disturbance of public tranquillity anywhere in the Province during the time. The Hon'ble Member will very probably say—'But this is all due to the Ordinance'! Assuming for a moment for the sake of argument that it is so, the fact remains that the Hon'ble Member has no reason to complain of any disappointment in the Punjab. Turning next to East Bengal, we find that there too, after the Hindoo-Mahomedan disturbances, which led to the promulgation of the Ordinance, were over, there has been no public disturbance. There have also been no public meetings held in defiance of the Ordinance, so far at least as the public is aware. A District Conference was proposed to be held at Faridpur with the District Magistrate's permission, but on his objecting to two of the resolutions on the Agenda paper—one about the deportation of Lala Lajpat Rai, and the other about the boycott of foreign goods—the organizers thought it best to abandon the Conference. There was great public indignation and disappointment in consequence, but there was no breach of the peace. It is possible that the Secret Police have been sending up to Government reports of meetings held surreptiously in private houses in proclaimed areas in Eastern Bengal, and indeed the Hon'ble Member says as much in his speech of 18th October. But in the first place it is necessary to accept with great caution what the Secret Police say in their reports, as the trial at Rawalpindi and other recent events have shown. And, secondly even assuming that such meetings have been held, there have been no breaches of the peace and no serious harm seems to have been done ; and I think in affairs of State, no less than in private life, it is often the part of wisdom to wink at things which it is difficult to prevent and which do no serious harm to anybody. So much about the two Provinces in which the Ordinance has been in force since May last. Outside these Provinces public disturbances have taken place only in two places in all India—one at Cocanada in the Madras Presidency some time ago and the other at Calcutta more recently. The former had its origin in an assault made by a European officer on a student for shouting the words *Bande Mataram*. In the latter, the police themselves are alleged to have been the aggressors. But whatever the origin of these two disturbances and however much one may deplore them, they certainly do not furnish any justification for saddling the whole country with

such a measure as the Council is asked to pass into law to-day. As regards public meetings in the different Provinces, with the exception of some held in Calcutta. I do not think that they have been of a character to attract special public attention. Strong things have no doubt been said at some of these against the Government and even wild things have probably been said at a few, but this has been largely due to the measures of repression which the Government have thought fit to adopt since May last. My Lord, I do not think there is really anything in the situation of the country which may not be dealt with adequately by the ample powers which the Government already possess under the existing law, if those powers are exercised with tact, judgment and firmness. In any case there is nothing of such urgency and such gravity as to require an immediate resort to the dangerous provisions of this Bill and to justify its being rushed through this Council in this manner. Ths Hon'ble Member says that as the Ordinance of May last expires on 10th November, unless the Bill is passed before that date, there would be a *hiatus*. This applies only to Eastern Bengal and the Punjab, and of these, the Punjab has been so absolutely quiet that the Government of India may well give it a chance of being again under the ordinary law. And as regards East Bengal, if the situation showed signs of real anxiety, the Government could issue another Ordinance, or legislation might be undertaken in the Local Legislative Council. In such matters it seems to me far fairer that if there must be legislation, it should be undertaken by Provincial Governments in their own Councils. Such a course will ensure a proper discussion, with full knowledge on both sides, of all the special circumstances of a Province, on which the Executive base their demand for extraordinary powers. It will also obviate the risk of enacting coercive legislation for those Provinces for which the ordinary law ought to suffice.

"My Lord, the bulk of the educated classes in India feel, and feel keenly, that during the last six months, their aims and their activities have been most cruelly misrepresented before the British public, and that they have not had fair play during the time. Exaggerated importance has been attached to the utterances of a few visionaries, and advantage has been taken of every accidental circumstance to represent an agitation for reform and for the removal of specific grievances as a movement of revolt. The malignant activity of certain unscrupulous Press correspondents has been largely responsible for achieving this result, but unfortunately colour has been lent to their stories by the series of repressive measures which the Government themselves have adopted. The saddest part of the whole thing is that the Secretary of State for India has fallen a victim to those grievous misrepresentations. Possessing no personal knowledge of the people of this country, and overwhelmed with a sense of the vast responsibilities of his office, he has allowed his vision to be obscured and his sense of proportion to be warped. From time to time he has let fall ominous hints in the House of Commons, and more than once he has spoken as though some great trouble was brewing in India, and the country was on the eve of a dark disaster. My Lord, in these circumstances, the passing of a Bill like the present and in such hot haste, is bound to have the effect of confirming the false impression which has been already created in England, and this cannot fail to intensify and deepen still further the sense of injustice and injury and the silent resentment with which my countrymen have been watching the course of events during the last few months. I think the Government are repeating in this matter the great mistake they made when they partitioned Bengal. Whatever advantages as regards administrative efficiency may have been expected from that measure, it has cost the Government the good-will of the vast majority of the people of that Province, and this is a loss which no amount of administrative efficiency can balance or compensate. Similarly, for one man whose wild talk the Government may be able to prevent by this Bill, nine hundred and ninety-nine will smart under a sense of injury that they have been placed under a law which they have not deserved and their minds will drift

away silently and steadily from the Government, till at last their whole attitude towards the administration is changed.

"My Lord, so much has of late been said and heard of sedition in India that a brief inquiry as to how far it really exists and, to the extent to which it may exist, what its origin and its character, may not be out of place at to-day's meeting. Five years ago, when Lord Curzon announced to the whole world at the Delhi Durbar that the people of India were frankly loyal to the British connection and the British Crown, I believe he stated but the bare truth. Now when any one speaks of loyalty in India in this connection, he speaks not of a sentiment similar to that of feudal Europe or of Rajput India, but of a feeling of attachment to British rule, and of a desire for its stability based on enlightened self-interest—on an appreciation of what the rule has on the whole done for the people in the past and of the conditions which it ensures for future progress. In this sense the educated classes of India have been from the beginning entirely loyal. It was, however, inevitable that they should gradually grow more and more dissatisfied with their own position in the country and with the existing system of administration, and twenty-two years ago they started an organized agitation for reform. This agitation, perfectly constitutional in its aims and methods, rapidly grew all over the country from year to year. It had not received much encouragement from the Government, but no serious obstacles had anywhere been thrown in its way, and its current flowed more or less smoothly and on the whole free from racial bitterness till Lord Curzon's time. Then came a great and in some respects a decisive change. Lord Curzon's reactionary policy, his attempt to explain away the Queen's Proclamation, his unwise Convocation speech at Calcutta—all these produced intense exaspiration throughout India. This exasperation was the worst in Bengal, because though Lord Curzon's measures affected all India, they fell with special weight on Bengal. And when on the top of these measures the Partition of Bengal was carried through, a bitter and stormy agitation sprang up in that Province, in which the general agitation for reform soon got completely merged. The bitterness of Bengal agitation gradually came to communicate itself to the reform movement all over the country by a sort of sympathetic process. Bengal has always been the home of feeling and of ideas more than any other part of India. The people took to heart very deeply the failure of their agitation against Partition, and then the more reckless among them began to ask themselves new questions and came forward to preach what they called new ideas. It is true that they have received a certain amount of hearing in the country, but that is more on account of the passion and poetry of their utterance than on account of any belief in the practicability of their views. Their influence, such as it is to-day, is due to the alienation of the public mind from the Government, which has already occurred, but which the Government have it still in their power to set right. Measures of repression will only further alienate the people, and to that extent will strengthen this influence.

"At the beginning of this year, another acute agitation sprang up, this time in the Punjab, against the Colonisation Bill and other agrarian grievances, and here a fresh element of bitterness was added to the situation by the State prosecution of the *Punjabee* on a charge of exciting racial ill-will, when the *Civil and Military Gazette* had been let off with only a gentle remonstrance. This agitation too on its side swallowed up for the time the general reform agitation in the Punjab, and the reform movement in other parts of India could not escape being affected by it. Then came the demonstrations at Lahore and the disturbance at Rawalpindi, and then the repressive measures of the Government—notably the deportation of Lala Lajpat Rai, the arrest and prosecution of Rawalpindi pleaders and the Public Meetings Ordinance. The whole country was convulsed, and while the Punjab itself was paralysed, in other parts of India even the most level-headed men found difficult to express themselves with due

restraint. That a man like Lala Lajpat Rai, loved by thousands not in his own Province only, a man of high character and of elevated feeling, a keen religious and social reformer, and a political worker, who, whatever his faults, worked only in broad daylight, should have been suddenly arrested and deported without a trial—this was a proceeding which stunned the people throughout India. And as regards the Rawalpindi case, what shall I say! For four months the whole country witnessed the spectacle of the venerable Lala Hansraj, a man as incapable of promoting disorder as any member sitting at this table—with other gentlemen equally respectable, rotting in the lock-up on a charge of inciting to violence and conspiring against the Crown! My Lord, it will be long before the memory of the sufferings of these men is wiped from the public mind. Meanwhile the country is waiting to see how the authorities deal with those who brought these sufferings on them by producing evidence which the trying Magistrate has pronounced to be 'most untrustworthy and probably fabricated'! My Lord, with these things happening in the country, is it any wonder that the voice of those who counsel patience and moderation and self-restraint should be for the time at a discount among their countrymen? The occurrences of the last six months have afforded ample encouragement to those who like to talk strongly and do not occasionally mind talking wildly.

"This then is the position. A few men in Bengal have now taken to preaching a new gospel, and here and there in the country one occasionally hears a faint echo of their teaching. But their power to influence the people—to the extent to which they are able to influence them—is derived mainly from the sense of helplessness and despair which has come to prevail widely in the country, both as regards the prospects of reform in the administration and as regards the removal of particular grievances. The remedy for such a state of things is therefore clearly not more repression but a course of wise and steady conciliation on the part of the Government. Your Lordship has already taken a most important step in the direction of such conciliation so far as the Punjab is concerned by vetoing the Colonisation Act. Let the work of conciliation be carried further—let the deported prisoners be brought back, and if the Government have anything against them, let them have a fair trial; and let the Province remain under the ordinary law after the Ordinance expires. As in the Punjab the Colonisation Act has been vetoed, so in Bengal let partition be modified in some manner acceptable to the Bengalees. The causes of acute discontent in these two Provinces will then have disappeared and the old stream of a movement for reform will be separated from the bitter tributaries that have recently mingled with it. The Government can then deal with the question of reform on its own merits, and if it is handled in a spirit of broad-minded statesmanship, a solution may be arrived at which will give general satisfaction. In this connection, I would like to say a word about a remark that fell from the Hon'ble Sir Harvey Adamson on 18th October. Speaking of the necessity of coercion, the Hon'ble Member said: 'The Government of India have all along recognized that unrest is not solely the outcome of seditious agitation, but has its basis on the natural aspirations of the educated Indians. To meet these aspirations and to associate Indians more closely in the administration of the country, we formulated a large and generous scheme of reform which is now before the public for criticism.' And he proceeded to express his disappointment at the reception which the scheme had met with and to complain that that reception showed that the Government had to deal with a section of irreconcileables.' My Lord, I am sure the Hon'ble Member had no intention of branding all who are unable to grow enthusiastic over the Government proposals as 'irreconcileables. The words employed by him have, however, been so understood, as may be seen from the telegram of the Bombay Presidency Association, and this is rather unfortunate. But what I want to say is this. If the Hon'ble Member expected that the publication of the Government scheme of August last would allay the discontent in the

country in any degree, he was bound to be disappointed. The scheme is neither large nor generous and in some respects it is not a scheme of reform at all. And the general disappointment which it has occasioned has necessarily intensified the prevailing feeling of discontent. As though this was not enough, the language employed in explaining the proposals is in some places unnecessarily offensive to certain classes. And taken as a whole, the document, I regret to say, lacks that dignity of statement which one always likes to see associated with an important State paper.

"My Lord, it has been said that though this Bill may be passed for the whole country, yet the people of any given place have two safeguards before they actually come under its provisions. The first is that the Government of India must extend this Act to their Province and the second is that the Local Government must notify the place as a proclaimed area. A little consideration will, however, show that there is really not much in either of these safeguards. The first is purely nominal. A place may be absolutely free from sedition of any kind and yet if it is thought that some other place in the same Province requires the application of the provisions of this Act, the Government of India have no option but to extend the Act to the whole Province. And thus for the sake of even one place, a whole Province will have this Act applied to it. Again, when the Act has thus been extended to a Province, any place therein may find itself suddenly proclaimed for the seditious activity, real or supposed, of only a few persons, though the vast bulk of the population may be perfectly law-abiding and free from the faintest suspicion of sedition. And once an area is proclaimed, the whole population will be indiscriminately made over to police rule. It is this fear which, apart from other objections, lies at the root of the great anxiety and alarm with which the Bill is regarded in all parts of the country. The Hon'ble Member says that when it is thought necessary to proclaim an area, 'it is reasonable that law-abiding persons residing within that area should be prepared to suffer some slight inconvenience for the public good.' I wonder what the Hon'ble Member's idea of a slight inconvenience is. Is it a slight thing to be exposed to the annoyance and unpleasantness of domiciliary visits? Or to have social parties of more than twenty persons raided upon or broken up, and the host and even guests, hauled up for holding a 'public meeting' without notice? The presumption of clause 3, sub-clause (3), may be successfully rebutted in Court and the Magistrate may acquit. But think of the trouble and misery which may be most needlessly caused. My Lord, with the kind of police we have in the country,—men, for the most part, without scruple and without remorse—these are not imaginary fears. We have just seen at Rawalpindi what they are capable of. Other instances can also be cited, where cases have been manufactured from start to finish. It is true that the intention of the Bill is not to interfere with social parties. It is also true that under S. 4, notice has to be given only of such public meetings as may be called for the discussion of particular subjects. But a police officer who is interested in getting any man into trouble can always pretend that a gathering of more than twenty persons was a public meeting, and it will not be difficult for him to arrange for a little evidence that the gathering was held for the discussion of a political subject. And under the plea that an offence was taking place, *viz.*, that a public meeting was being held without notice, he may want to be admitted to the place of the gathering. If the host is a strong man and knows his legal rights well, he may resist the officer and decline to admit him. But he may then find himself hauled up before a Magistrate and must be prepared to face a trial. But for one strong man who will thus defy the police, nine will tamely yield. Moreover in those cases which may go before a Court, how the Magistrate will construe the definition of 'public meeting' must always remain a matter of uncertainty. A curious illustration of this is supplied by the Hon'ble Member himself. Last Friday, the Hon'ble Member told the Council that the object of adding sub-clause (3) to clause 4 was to exempt meetings like Municipal meetings from the

requirements of notice or permission. 'If the provision,' he observed. 'were construed rigidly, it might be necessary to give notice or obtain permission before holding Municipal meetings in a proclaimed area.' In the Hon'ble Member's view, therefore, a Municipal meeting is a public meeting. My Hon'ble friend, Dr. Ghose, on the other hand, tells me that a Municipal meeting cannot be a public meeting under the definition given in the Bill. Now, the Hon'ble Member was Chief Judge of Burma before he became Home Member of the Government of India. And Dr. Ghose is one of the most learned and distinguished lawyers in the country. A difference of opinion between two such authorities in construing the definition of public meeting, even before the Bill has become law, augurs ill for the manner in which the definition may be dealt with by plaint or inexperienced Magistrates!

"My Lord, there are other objectionable features of the Bill, but I do not wish to tire the Council with any further observations. The Bill is a dangerous one, and the only satisfactory way to improve it, is to drop it. But more than the Bill itself is to my mind the policy that lies behind the Bill. I consider this policy to be in the highest degree unwise. It will fail in India as surely as it has failed everywhere else in the world. It will plant in the minds of the people harsh memories which even time may not soften. It will by no means facilitate the work of the administration, and it will in all probability enhance the very evil which it is intended to control."

The Hon'ble DR. RASHBEHARY GHOSE said:—"My Lord, I am not using a mere phrase of course when I say that I was never oppressed by a sense of responsibility so deep or so solemn as on the present occasion. I am well aware that one of the first duties of the State is to preserve law and order, and if I thought that either law or order or property was menaced, or that public tranquillity could not be maintained unless the Government were armed with the power which they now propose to take, I would be the first to vote in favour of the Bill, and to vote for it with all my heart. But we have been assured on the highest authority that the present situation is not at all dangerous, and that the heart of India is quite sound. The so-called unrest, we have been also told by one who ought to be a competent Judge, is only skin deep, a cutaneous affection which will readily yield to judicious treatment. Again, only in June last Mr. Morley said that the disturbances were only local and sporadic. Now what has happened since? Is the condition of the country now worse than it was in June and would not the passing of the present Bill be taken as a sign of that very nervousness, trepidation and fear which Mr. Morley thought would be not only unworthy of, but extremely perilous to, the Indian Government?

"My Lord, I am not in the confidence of the police or of special correspondents to the English press and cannot, therefore, speak with papal infallibility, but I can solemnly affirm that though there is discontent which may possibly by injudicious measures be turned into sedition, the people of India are thoroughly loyal. If anybody doubts it, let him recall the manifestations of loyalty and of the deep attachment to the throne which followed the Prince of Wales everywhere, when he visited this country. Calcutta was at the time in a fever of agitation and excitement, as Bengal was weeping for her children and would not be comforted because they were not, and yet the Prince was received with demonstrative enthusiasm, which showed beyond all cavil or controversy our devotion to the Crown. Do not be misled by the foolish speeches of a few irresponsible men, but remember what Burke says about the noise that a few grasshoppers can make in a field. Do not, I pray you, by exaggerating the danger, play into the hands of the seditious agitator. Yet, this is precisely the thing that Sir Harvey Adamson's Bill, which casts an undeserved slur on the loyalty of three hundred millions of men, is calculated to do, for it is nothing more, nothing less, than an indictment against the whole nation. And I am confident that this

measure if carried would have a serious effect on the good people in England, who are daily fed with stories of Indian unrest, which would make one's flesh creep, by men who, though they may have grown fat in this 'land of regrets,' cannot certainly plead the excuse of youth. These 'literary assassins,' to use a phrase made canonical by Cobden, and their abettors would now be able to say that they were right, and would have the doubtful satisfaction of seeing our financial credit crippled. As regards the people of this country, there is only one very small section to whom the Bill would be welcome,—I mean the extremists, for it would enable them to adorn their perorations with references to Russian methods of Government. For whatever precautions you may take, speeches will continue to be delivered. You cannot effectually gag one-sixth of the population of the world.

"My Lord, I do not wish to indulge in well-worn common places about the futility of coercion;—the danger of sitting on the safety-valve, for instance, which must be familiar even to men less gifted than Macaulay's forward school boy. But I must remind Hon'ble Members that the Irish question yet remains to be solved. It has certainly not been solved by the numerous Coercion Acts, fifty in number, which bulk so largely in the Statute-book. In that unhappy country, the 'Isle of Destiny,' agitation has led to coercion, and coercion in its turn to greater and more dangerous agitation. But I am perhaps forgetting that Ireland is a cold country where a fur coat might be useful and therefore the analogy may not quite hold good. One thing, however, I may safely assert, and that is that in Ireland as well as in India the application of drastic remedies to skin diseases which rapidly disappear under mild treatment always leads to serious complications. Is there any reason for thinking that this is not true of the body politic? The measure now before the Council may secure for a time outward quiet, and drive sedition underground, but its inevitable fruits will be growing discontent and distrust, which may under repression readily slide into disaffection. It will thus create more evils than it can possibly cure. And this reminds me that the movement in the Punjab was mainly agrarian and was arrested by Your Lordship's refusal to give your assent to the Colonisation Act, and not by the Ordinance; the powerlessness of which to keep down unrest is shown by the fact that there are no signs of improvement in East Bengal.

"My Lord, we have no doubt whatever that in devising the present measure, the Government have only the interests of peace and order at heart. But authority which is compelled to be severe is liable to be suspected, and when it seizes the rude weapons of coercion, its motives are liable to be misconstrued. People are everywhere asking, in fear and in trepidation, what next and next. What is to be the end of this new policy? For the spirit of coercion is not likely to die for lack of nourishment, as it makes the meat it feeds on, and trifles light as air are to it confirmations strong, shall I say as an Indian police report or a scare telegram from our own correspondent?

"I repeat that the situation is not in the least dangerous, and an over-readiness to scent danger is not one of the notes of true statesmanship. But suppose I am wrong and the position is really critical, what does it prove? It proves, unless we are afflicted, not merely with a double or even a triple, but with a quadruple dose of original sin, that the Government of the country is not the most perfect system of administration that some people imagine.

"My Lord, I began by saying that this Bill is an indictment of the whole nation. If, however, it is true, and this can be the only justification of the measure, that India is growing more and more disloyal, this Bill is really an indictment of the administration. The positions will then be reversed. The Government, and not the people, will then be put on their defence. There is no escape from this dilemma. If there is no general disaffection, you do not want this drastic measure. The prairie cannot be set

on fire in the absence of inflammable materials to feed it. If, on the other hand, a spirit of disloyalty is really abroad, it must be based on some substantial grievance which will not be redressed by Coercion Acts. You may stifle the complaints of the people, but beware of that dreary and ominous silence which is not peace, but the reverse of peace. Even immunity from public seditious meetings may be purchased too dearly.

"And this leads me to remark that the present Bill, which the Member in charge of it frankly admits is a repressive measure of considerable potency, does not seem to be modelled on any law of which I am aware. It may possibly be based on some ukase though the definition clause seems to be original, but I cannot speak with confidence because I never had occasion during the last forty years to study the jurisprudence of Russia, and I sincerely trust I shall not now be called upon to do so. There is no such law in Italy or Belgium, France or Switzerland, though the seditious agitator is not an unknown figure in Europe, which is honeycombed with secret societies of anarchists and socialists. Riots, too, which the soldier is often called upon to quell, are not infrequent; and yet there is no such drastic law in any of these countries for the suppression of public meetings. In America, as Hon'ble Members are perhaps aware, the right of public meeting is safeguarded by the very constitution of the United States, which provides that Congress shall make no law 'abridging the freedom of speech or of the press, or of the right of the people, peaceably to assemble and to petition the Government for a redress of grievances.' And this has also been the wise policy of the English law which was interrupted only for a short time in the Georgian period when the public mind was much excited by the events in France, but Lord Sidmouth's Act, which did not prohibit but merely forbade any meeting of more than fifty persons to be held, unless six days' notice was given by seven householders to a Magistrate, almost fell dead born, and is now remembered only on account of the Cato Street conspiracy which was its immediate outcome.

"My Lord, it has been said by a very high authority that, in view of the activity of the extremists, it would be the height of folly not to try to rally the moderates to the side of the Government, but surely, surely, repressive measures are not the best method of attracting their loyalty. The right of personal freedom and of meeting in public has always been regarded by us as an inalienable privilege of every subject of the British Crown. But we were painfully reminded only the other day that we may be deported without a trial, and now that the right of public meeting is going to be taken away from us, with what face can an Indian subject of His Majesty say '*Civis Romanus Sum*,' which was at one time his proud boast. We must speak our convictions, and that in no hesitating or diffident notes, as our dearest interests are at stake, for this Act, passed—we know how it would be administered—would, I fear, prove the grave of all our political aspirations. You are taking away from us who have not even that which we have. Put down disorder by all means, the civil sword is at present strong enough for that purpose; but do not kill the free play of thought or the free expression of it. In the organ tones of Milton, which may still be heard across the centuries, 'that would be the slaying of an immortality rather than a life.' In pleading in those impassioned words, which nobody who has read them can ever forget, for the liberty 'to know, to utter and to argue freely according to conscience as a liberty above all other liberties,' the great protagonist in the arena of free discussion points out that England 'needs, no policies, no stratagems, no licensings to make her victorious,' neither I should add, at home nor abroad. And it is to this freedom of discussion that England owes, among other blessings, the abolition of the slave trade and slavery. Catholic emancipation, parliamentary reform and the repeal of the Corn Laws. It may be, we have been so long in the house of bondage, that the blaze of liberty has dazzled and bewildered some weak eyes. But in time we shall become accustomed to the light and able to bear it.

Before that time arrives violent opinions may be sometimes expressed; but folly, if treated with forbearance, has generally a short life.

"It is said that we are intoxicated with the new wine of freedom, that Locke and Milton, Fox and Burke, Bright and Macaulay, have unsettled our minds. But those who say so take no account of the Time Spirit against which even the Olympian gods must fight in vain. I trust I am no dreamer of dreams, but I see that what is passing before us is a social and political evolution. You may guide it, but you cannot arrest it, any more than you can make to-day like yesterday. Silent and as yet half conscious forces are at work, which a wise statesman would harness to law and order by timely concessions. But a reactionary policy would only make the last state of the country worse than the first; for angry passions, which under milder measures would have died away, would stiffen into deep and lasting hatred; and the infection is sure to spread with time.

"Is the Government, I ask, afraid of the rant of a few agitators? Is the police unable to preserve public order, and has the Magistrate ceased to be a reality or the Statute-book a dead-letter? If the free right of public meeting is abused, is the ordinary law incapable of punishing such abuse? The question really comes to this—Is the right to meet in public for the discussion of political matters to be taken away from us simply because it is liable to abuse? There was no attempt to interfere with the right in England after the "No Popery" riots when London was held by the mob for two days together, or even after the Reform riots when Bristol was sacked and the Magistrates were powerless. It is true public meetings have been sometimes suspended in Ireland, but does the condition of India in any way resemble that of Ireland? Are there any cattle maimers, incendiaries or agrarian or Phœnix park assassins in India; is there any association which openly preaches that killing is no murder? Thousands of mass meetings have been held in Bengal, every one of which was orderly except on a recent occasion where the police were sent to keep order. And here I may mention that our experience is that the custodians of the public peace themselves require a custodian, but if the salt hath lost its savour wherewith shall it be salted?

"We do not however object to the admission of the police to meetings, which are really public; but what is the justification, and where is the necessity, for clause 5 of the Bill. It is true, Sir Harvey Adamson reminded us that public meetings can be prohibited only by officers of high standing and of large experience. But his assurance will hardly satisfy those who have read Bentham's Book of Fallacies.

"It has been said that a loyal community has no more reason to apprehend the application of these powers than the imposition of the British death duties. This I venture to think is the reasoning of men who live in closets, and are unacquainted with practical affairs. The answer to this sort of argument is to be found in the speech of Sir Charles (afterwards Lord) Russell, Chief Justice of England, on the Irish Crimes Bill. As to public meetings, he said, they would be told with sincerity and truth that the only object of the clause was to prevent meetings which were treasonable or seditious, or openly hostile to the peace. Such professions, added the distinguished speaker, might be made in perfect good faith, as they had been on previous occasions; but he feared the public meetings clauses would be so applied as to put down the free expression of public opinion in Ireland, and the people would believe them to be directed to that object.

"Now if such things can take place in a green tree, what may not happen in the dry. It is notorious that in this country we have even less to fear from a bad law than from its administration by the machinery entrusted with the task. And I have no hesitation in saying that if this Bill is passed, it will make the police, who are the eye and the ear of Government, the absolute masters of the people, who will be hendad

over to the tender mercies of a body of public servants who are not the most efficient or the most immaculate; and their domiciliary visits, which I take it, will not be few or far between, are sure to lead to breaches of the peace among a people to whom the sanctity of their homes is something more than a mere phrase. I wish to speak with all reserve, but I am bound to say that even the action of our Magistrates, who are part of the executive, will be regarded with distrust as not possessing either adequate knowledge of the law or that judicial temper which is so essential to the discharge of those delicate duties which will now be entrusted to them. If any Hon'ble Member is inclined to think that my misgivings are unfounded, let him study the comments in the Irish press on the cases, and their name is legion, decided under the Coercion Acts.

"Not only is the measure in my humble judgment uncalled for and impolitic, but it is also superfluous; as the Indian Statute-book gives the Government ample power to put down sedition. You will find the iron hand concealed in the velvet glove in S. 108 and also in section 144 of the Code of Criminal Procedure, which enabled the Magistrate of Calcutta only the other day to prohibit public meetings. Unlawful assemblies again may be dispersed under sections 127 to 132 of the Criminal Procedure Code; while open sedition may be punished under sections 124-A, 153-A and 505 of the Indian Penal Code. We have, however, been told that the object of this Bill is to insure the free admission of the police to all public meetings for the purpose of taking notes of any seditious speeches that may be made, but does anybody seriously believe that the Indian Police are equal to the task. It may be easy to provoke a riot, it is sure to be provoked if private houses are invaded, but it is not quite so easy to report a speech correctly.

"My Lord, I wish to speak with that loyal frankness which is the best proof of true loyalty, and I repeat that repressive measures like the present would put a severe strain on the loyalty of the educated classes who have been considerably exercised in their minds by the resurrection of Regulation III of 1818 and by the Ordinance of May last. I am well aware that we are spoken of as a microscopic minority, an alliterative phrase which seems to have the same soothing effect on certain minds as that sweet word Mesapotamia. But though numerically not very large, the influence of the educated classes is not to be measured by their numbers. One of the effects of the Bill, it is my duty to warn you, would be to drive some of them into the camp of the extremists.

"It has been said that this Bill is a measure of great potency. I agree,—but potency for what purpose? For putting down sedition? I say, no. It will be potent for one purpose and one purpose only, for the purpose of propogating the bacillus o secret sedition. The short title of the Bill is—A Bill for the Prevention of Seditious Meetings,—but I venture to think the title requires a slight addition. It ought to be amended by the addition of the words 'and the Promotion of Secret Sedition.' Order may be kept, peace may reign in India, but this measure will produce the greatest disappointment among those by whom, though they are not the natural leaders of the people, public opinion is created and controlled. The logic of coercion we all know is charming in its simplicity, but its authors forget that they cannot coerce thought—they cannot make men loyal by a legislative enactment. It is true, a policy of thorough may be successful, but no Englishman at the present day, except possibly some of the oracles of the press, would counsel anything of the kind.

"I am sorry to find that the Hon'ble Home Member's mind is filled with despair on account of the coldness with which the recent reform proposals, which I may mention in passing are merely tentative, have been received by a section of the irreconcileables. But this is not the feeling with which English Statesmen have approached the Irish question. They have never lost heart because they were unable by the most generous concessions—they were bread and not something else, to win the affections, I

do not say of the irreconcileables, but even of the most reasonable and intelligent among the Irish people. Their motto has always been 'Be just and fear not.'

"My Lord, for the first time in the history of the world, as Mr. Morley said, not long ago a strong and effective administration has been found not only compatible with free institutions, but has been all the more effective by their side; and he recommended this noble though arduous policy to the country; because it is noble, and because it is arduous. Let it not be said that your Excellency's Government found this noble and glorious task too arduous.

"And now I find I must stop. I trust I have said enough to justify my vote. I do not oppose this Bill in a party spirit, for there are no parties in this Council; nor have I any desire to embarrass the Government. I oppose this Bill because I am fully persuaded that it is foredoomed to failure. I oppose this Bill because it will intensify and not mitigate the evil which you are seeking to guard against. I oppose this Bill, it is no paradox, because I am a friend of law and order, both of which are menaced by it. I oppose this Bill because the Government already possess all the power they can reasonably want in the armoury of the Penal and the Criminal Procedure Codes. I oppose this Bill because it violates all the liberal traditions which have up to this time guided the Government. I oppose this Bill because I wish to see the English rule broad based on the peoples' will, and not resting merely on the sword, whether Indian or British. And lastly, I oppose this Bill because it will kill all political life in this country.

"My Lord, we are conscious we are fighting a losing battle. We know we shall be defeated, but we shall not be dejected. For there are some defeats which are more glorious than victories, and we shall count this among their number. We have been taught and have learnt to value the right of public meeting as one of our dearest rights, and we should have been unworthy of ourselves, unworthy of the trust reposed in us, if we quietly submitted to a measure which is aimed at it and which would be so fatal to all national growth. In our defeat, however, we shall be sustained by one great consolation, the consolation of having endeavoured, according to our lights, to do our duty, to the Government and to the country.

"One word more. It is unfortunate that the 1st of November should have been fixed for this meeting. That day has always been associated in our minds with the gracious Proclamation of Queen Victoria. It will now be associated with the loss of one of our most cherished rights."

The Hon'ble TIKKA SAHIB RIPUDAMAN SINGH OF NABHA said:—"I may, my Lord, be permitted to make a few *observations* on this measure, which is now before the Council. It is doubtful whether a law of this kind would help to produce better feelings between the Government and the people. The Bill at first was so vaguely drafted that I wondered whether even a meeting of this Council held in a proclaimed area would not also have come under section 3, sub-section (2). Therefore it is pleasing to note that some wholesome alterations and modifications have been suggested by the Select-Committee. For instance, firstly, that this Act will not be permanently placed on the Statute-book, and secondly, that a notification made under section 2, sub-section (1), will expire after six months. I hoped that the Bill would be so modified and altered by the Select-Committee as to make a silent vote on my part possible, but my hopes have not been realized. The definition of public meeting in section 3, sub-section (1), is very wide, so that even all social and religious meetings may be included, which is most undesirable. Section 3, sub-section (2), is also objectionable, because the sanctity of private houses should be respected by the Government, and because interference in the personal affairs of the people is always likely to cause much heartburning. The wording of section 3, sub-section (3), is very vague and likely to cause a great deal of annoyance to the general public and to the law-abiding members of the community, as private gatherings may

be included under it, if the wording of this section is allowed to remain as it is. The object of the Bill is only to prevent the spread of sedition by public meetings; therefore, that should be quite clearly defined, as in section 4, sub-section (1), the words 'any subject likely to cause disturbance or public excitement' are too wide in their significance. In section 4, sub-section (3), I regret to note that no *clear* exception has been made in the favour of meetings of purely a social or religious character; as prohibition of, or the necessity of taking special permission for religious or social gatherings would cause needless annoyance to the law-abiding and loyal subjects of the Crown. Apart from that, interference on behalf of the Government in the case of purely religious and social meetings would be calculated to cause real ill-feeling. For general purposes the Indian Penal Code and the Code of Criminal Procedure being quite sufficient, the scope of this Bill should be strictly restricted, and in section 5 all the words after the word 'disaffection,' and also the same words in the preamble are, in my humble opinion, quite unnecessary. The objections which I have raised against section 3, sub-section (1) apply with equal force to section 7 of the present Bill. The words 'on any subject likely to cause disturbance or public excitement' in this section are superfluous and goes too far. It is not proper and desirable to interfere with the religious or social affairs of the people, and the Bill would lose none of its effect if something were done to prevent needless interference in the case of social and religious gatherings. If the Bill is passed at all, these defects should be removed, and the utmost care should be taken to prevent abuse of the provisions of the Bill by the over-zealous subordinate cffiials. For the above reasons, I am sorry, my Lord, that I have to oppose this Bill as it stands."

The Hon'ble SIR HARVEY ADAMSON said:—"With reference to a remark of the Hon'ble Mr. Gokhale I may say that when at a former stage of this Bill I alluded to irreconcileables I referred to the extremist party whose avowed policy is to make the government of the country impossible. I have read again what I then said, and I am unable to see that it can bear any other construction. With reference to another of the Hon'ble Member's remarks I bow entirely to the Hon'ble Dr. Ghose's superior knowledge of law.

"I explained at a previous meeting why this legislation had been undertaken in Simla. The criticisms that have been offered do not require me to add much to what I have already said. I explained that we considered it necessary to legislate so that the law should have effect before the Ordinance expired. If that necessity be doubted I point to recent events in Calcutta which, in the absence of the Ordinance, would certainly have spread the infection to Eastern Bengal and originated a new period of lawlessness there. It has been suggested in many communications made to me that the Ordinance might have been extended for a further period. This course would have been quite contrary to the spirit and the letter of the law, and I am sure that if we had adopted it none would have more vigorously attacked us than those who have suggested it. I explained that we delayed legislation until experience revealed the defects of the Ordinance and especially that we were unwilling to legislate until we had seen whether the Council reforms that were laid before the public would meet any response in allaying seditious agitation. And I further showed that the time allowed for the discussion of this short Bill was ample. Nearly the whole of it has been before the public for over five months in the shape of the Ordinance, which has been discussed *ad nauseam* in every newspaper and on almost every platform in the country. The Hon'ble Mr. Gokhale says that the Bill is being discussed in a meeting of the Council which is not full. Whose fault is this? Every Member has had ample notice and ample opportunity of attending, and I surely may presume that Hon'ble Members of this Council will take the trouble of undertaking a short railway journey if they consider the matter before the Council to be of sufficient importance to require their presence. The presumption to be drawn from the Council not being full is that the Hon'ble Members who are

not present either approve of the Bill or at least do not so strongly disapprove of it has to consider their presence necessary. The objections to legislation at Simla are not so strong now when there is a railway that runs to the door of the Council Chamber as they were years ago in the time of Lord Northbrook when they were no such facilities. Every Member of the Council could easily have been present on the day when the Bill was referred to a Select Committee. The bill has practically been before the country for months, and the full and complete arguments that have been urged against it to-day show that Hon'ble Members who are opposed to it have had ample time to prepare their briefs, and that objections on this account are groundless.

"In the objections of the Hon'ble Members who are opposed to the Bill and in the criticisms that I have received from elsewhere the feature that has struck me most forcibly is that these objections and criticisms have greatly exaggerated the scope of the Bill. It has been assumed that if a place is declared as a proclaimed area there will be an end for ever after—or at least for the three years during which the Bill will operate—of free speech and free meetings in that place. Now, quite apart from the fact that even in proclaimed areas the Bill gives power to prohibit only certain meetings of a kind harmful to the public peace, the assumption that the Bill contemplates any permanent curtailment of public liberty is absolutely unfounded. The Bill provides that the Local Government may declare any place to be a proclaimed area and it is quite true that it does not provide in words for rescinding such an order. But that is a mere trick in drafting. The General Clauses Act provides that the authority which has power to make an order has also power to rescind it. The declaring of a place to be a proclaimed area is therefore only a temporary measure. It is intended to meet only exceptional circumstances of danger, and when a proclaimed area reverts to its normal condition of freedom from danger of disturbance, then the necessity for retaining it as a proclaimed area ends, and the order will be rescinded, and the Bill will cease to have operation on that area. This is a point that should never be lost sight of in considering the effect of the Bill. When remembered in conjunction with the objections raised by Hon'ble Members its effect is to detract enormously from the strength of every objection that has been urged. I beg that this condition may be taken as qualifying every word that I say to-day, namely, that the Bill is designed to operate only in exceptional circumstances, exceptional places, and exceptional times of insecurity.

"Now, in defending the Bill against the attacks that have been made on it there are two points that I must endeavour to clearly prove. The first is that in the present circumstances of India a measure for repressing inflammatory oratory is necessary. The second is that the Bill does not give powers in excess of what is required to achieve that object. As regards the necessity I almost feel that I should apologise for wasting the time of the Council, for the course of events during the past few months has surely been sufficient, without words of mine, to prove the reasonable men that a preventive measure is necessary. The party of extreme agitation, at least so far as they consist of men of matured understanding, may be comparatively few—I doubt if they are so few as the Hon'ble Members represent—but they exercise a baneful influence. They are teaching the schoolboys and students of the country that the Government has established in India is a Government of despots whose only desire is to enrich themselves and to impoverish and depopulate the country. They are teaching the younger generation who in a few years will in the natural course of affairs take a large share in the administration of India that that administration is one of chicanery and deceit. It is no light thing that by the action and avowed policy of this disloyal party, the masses of the common people, who are contended and law-abiding when left to their own devices but whose natures contain elements that are easily stirred to violence, have been excited by plausible lies to plunge the country into disorder. Nor is it a light thing that determined attempts have been made to seduce the police and even the native army from its

allegiance. The whole aim of the seditious party is to subvert the Government of the country, and it may be summed up in one word,—it is treason. But I will not content myself with general statements. I will take up the Hon'ble Mr. Gokhale's challenge and will show that in every part of India where seditious oratory has been poured on the people during the past eight months, the immediate result has been grave lawlessness and disorder.

"In the Punjab during March and April last a flood of platform oratory was let loose. Speeches of a highly inflammatory nature were delivered almost daily. These speeches had a pernicious effect on the uneducated and uncritical minds of the people, who were wrought to a high pitch of excitement. This oratory culminated in the riots at Lahore and Rawalpindi, which would no doubt have been followed by similar occurrences elsewhere if prompt action had not been taken.

"A similar flood of oratory was about the same time poured forth in Eastern Bengal, inculcating among other things the boycott. It excited the population of that Province and culminated in the serious riots at Comilla and Magraht and the neighbourhood in Tippera district, at Nangalband in Dacca, at Jamalpur, Bakshiganj, Kharma, Bahadarabad, Dewanganj, Tarakandadat, Defuliyahat, and a number of other places in the Mymensingh district, at Solanga in Pabna and Kishorhat and Ekdala in Rajshahi. There were also incipient disturbances elsewhere, but these were nipped in the bud by the fortunate presence of the Magistrate or the police.

"In Madras, which until the present year had been free from political disturbances, platform oratory of an inflammatory nature was carried on almost daily in the latter part of April and the beginning of May. The result was the outbreak of students at Rajahmundry, the serious riot at Cocanada in which the club was wrecked, and a disturbance at Rajahmundry which necessitated the despatch of troops to that place.

"In Calcutta there had been meetings almost daily since the beginning of August, and a stream of seditious oratory was poured forth on the town. The police were urged to forsake their duty, the people were incited to attack the police, especially the European police, and students were advised to arm themselves with *lathis*,—advice which they accepted. The result was that disturbances took place on August 7th and 26th, September 9th and October 2nd to 5th which became so serious that the authorities were compelled to take extraordinary action under S. 144 of the Criminal Procedure Code in restraint of public meetings.

"The Hon'ble Members who oppose the Bill seem to be inclined to admit much of this. They admit that a party has been formed whose aim and object is to subvert the Government of the country. But they say 'why do you not prosecute these seditious agitators? The existing law of the country—the Indian Penal Code—gives ample power to punish them. Why do you not enforce it instead of enacting a measure which will cause inconvenience to and may possibly imperil the loyal subjects of His Majesty?' Do Hon'ble Members ask for an answer to that question? Do they not themselves know it? The answer is that in order to prosecute there must be witnesses. In western countries public sentiment is against the breakers of the law. If in a European country treason were preached at a public meeting many of those present would, from patriotic motives, come forward and denounce and testify against the traitors. But what happens in India? The public are assembled in a meeting at which the most violent sedition is preached. Most of those present—if we are to believe the Hon'ble Members who oppose the Bill—are loyal citizens. Surely it is the duty of loyal men in such a case to come forward and give evidence against traitors. When were men of the moderate party in India ever known to do this? It may be a moral certainty that sedition was preached, but no witnesses of respectability are to be found. The moderate party in India do not recognize the moral obligations that are accepted by loyal subjects in every other country in the world. That is the reason why in India

we cannot rely on prosecutions and are obliged to resort to preventive measures which entail inconvenience, and it may be further risks, on the innocent and the guilty alike. Herein lies the whole fallacy of the Hon'ble Dr. Rashbehary Ghose's argument, and of his comparison between India and England, and India and continental nations. There is a loose notion prevalent that the right to a free expression of opinion is a fundamental doctrine of the law of England. But as every lawyer knows the phrases "freedom of discussion" and "liberty of the press" are not to be found in any part of the Statute Book nor among the maxims of the common law of England. The true state of things in England is simply this, that the law permits anyone to say, write, and publish what he pleases, but if he makes a bad use of this liberty he is liable to prosecution and punishment. The Government of India have no desire that it should be otherwise in India, provided that prosecution is feasible. But prosecution in India has been amply proved to be an inadequate remedy for treason and sedition, owing to the want of public spirit and patriotic feeling among the very class who are now crying that their liberties are being endangered. Let this class act the part of good citizens, and there will be no need for any other remedy for sedition than that which exists in England. It is simply because the law-abiding people of India will not assist the authorities against the law-breakers—as law-abiding citizens in every other civilized country in the world are always ready to do—that the Government is driven to a policy of prevention instead of confining itself to the prosecution of law-breakers. I cannot at short notice follow the Hon'ble Dr. Rashbehary Ghose in his researches into the laws of Italy, Belgium, France and Switzerland. The Hon'ble and learned doctor is an accomplished scholar and an extensive reader. His acquaintance with the constitutional history and law of western countries is profound. But he is a lawyer as well as a student. I hope that he will forgive me when I say that in his comparison between the freedom of India and the freedom of continental nations he has assumed the role of an advocate addressing a jury rather than that of a judge or of an impartial critic. Let me remind him of the *droit administratif* which is part of the system of most continental nations—whether Royal, Imperial or Republican—under which the Government as representing the State has rights and powers against individuals superior to and independent of the ordinary law of the land, and under which officials are exempted from the jurisdiction of the ordinary tribunals. Would the Hon'ble Member prefer for India unfettered executive action of this nature to the comparatively mild preventive measure which has so excited his indignation?

"The Bill has been challenged on the ground that it can be applied to Provinces in which no actual cause of urgency has yet occurred. I have explained that in three Provinces and in the capital town of India circumstances have occurred that showed the necessity for a measure of prevention of inflammatory oratory, which can be promptly applied when the necessity arises. It would be criminal folly to neglect that warning. What has happened in these Provinces may easily happen elsewhere. Indications are not wanting that seditious oratory followed by the same unhappy consequences may any day run riot in other Provinces. The reason for extending the Bill to the whole of India is that experience has shown that it may be necessary any where to resort with promptitude to such measures as are made lawful by the Bill.

"I think that I have completed the first part of my task and proved that prevention is necessary. The truth is that India under British Government has enjoyed a liberty —whether in the press or on the platform—that has been given to no other country in the world except England. That liberty has degenerated into a license which would not for a moment be tolerated in any country in the world—even in England. This abuse of freedom not only retards progress but it threatens to engulph India in anarchy and riotousness, and no Government on earth—unless it abnegated its functions—could dare to leave such an evil unchecked.

"And now, having proved the necessity for a measure of prevention, I will proceed to the second part of the task which I have undertaken to-day, and show that the Bill which is before us gives no unreasonable powers, and that it gives no power in excess of what is barely necessary for achieving the object in view. The chief point of attack has been the definition of public meeting. It has been urged that it is too wide and too all-embracing. I admit that the definition is a wide one. It has been made wide on purpose so as to include all meetings of a public nature that may by any possibility be harmful and to leave no room for evasion. But the definition can harm no one. It is not the definition of an offence. It is no offence to hold any such meeting as is contemplated in the definition, provided that a very simple formality is observed. Nay, more ; the Bill does not even give power to prohibit meetings merely because they are meetings that fall within the definition. A further and a perfectly reasonable condition has to be satisfied before a meeting can be even prohibited. The District Magistrate or the Commissioner of Police has to exercise his discretion. This means that he has to consider all the circumstances and all the facts at his disposal. It is only when he has done so, and when in the exercise of his discretion he has come to the conclusion that the meeting in question is one that is likely to promote sedition or disaffection or to cause disturbance of the public tranquillity, that he is empowered to even prohibit it. It will be observed that the only officers who are empowered to exercise this discretion are officers of high standing and of large experience,—the District Magistrate and the Commissioner of Police. They are the highest officers that under the ordinary criminal law of India are entrusted with preventive jurisdiction. It has been contended that if the discretion is given to these officers it will make room for oppressive proceedings. This contention assumes that officers of high standing are deviod of common sense and of a sense of justice and is tantamount to an assertion that the whole scheme of preventive jurisdiction as embodied in the Code of Criminal Procedure is wrong. I cannot for a moment admit this contention. This is a very important feature of the Bill, which is to be borne in mind in judging of the reasonableness of the measure. None but officers of the very highest standing are empowered to prohibit meetings. Another even more important feature, which has hardly received justice from the Hon'ble Members who are against me, is that the Bill nowhere gives an opening to indiscriminate or doubtful interference by the police. It provides for the attendance of persons who may be police officers at public meetings for the purpose of reporting the proceedings. I cannot conceive that any reasonable objection can be taken to this provision. The Bill provides that if persons deliberately break the law and hold a public meeting in defiance of a special prohibition, the meeting shall be deemed to be an unlawful assembly. In this case the persons concerned are deliberately resisting the execution of a law and in this respect the Bill, in allowing the police to act, does not go a single step beyond the provisions of the ordinary criminal law. The only other case under the Bill in which the police can interfere of their own accord is the case in which a person, without permission in writing, delivers a speech in a public place within a proclaimed area. In this case the police may arrest without warrant, but their action is taken in open day and in the face of the public. There is therefore in the Bill not the slightest opportunity for any doubtful interference by the police. But there is in the penal causes of the Bill an offence which falls into a somewhat different category from those I have mentioned. If a public meeting of a certain kind is held in a proclaimed area without either notice being given or permission obtained the promoters of that meeting have committed an offence. But there is not the element of plain sailing here that there is in the other offences. It is not apparent to every onlooker that an offence has been committed. Before taking steps to vindicate the law the officer concerned has to satisfy himself both that the meeting is a public one and that it is of the kind for which notice or permission is required. In this case police action, if allowed, might be based on grounds that could be questioned. For this reason and in this case the Bill gives to the police no

power to interfere. The clause to which I refer is cl. 6, sub-clause (1). When read with the provisions of the Code of Criminal Procedure it will be seen that the offence is one which the police are not empowered to take cognizance of. Any contention, therefore, that the Bill allows any dubious or questionable interference by the police falls completely to the ground. The effect of the operative clauses of the Bill may be summed up in three sentences—

(1) They require notice to be given of the intention to hold public meetings for the discussion of political topics in order that accurate reports of the proceedings may be obtained.

(2) They enable officers only of the highest standing to prohibit seditious public meetings.

(3) They completely exclude dubious action on the part of the police.

And now I have completed the task that I set before me. I have shown that the Bill is necessary, and I have shown that it is reasonable. Every measure of prevention must entail a curtailment of liberty. It is no pleasure to me to be piloting a repressive measure through this Council. I would much rather be occupied with a measure of constitutional progress. But if it is my fate to be in charge of a repressive Bill I say, let it be strong enough to be effective. I have no belief in half measures for suppressing treason. I am not called upon to-day to defend the Bill from attack on the ground that it is not sufficiently drastic to meet the evil which it is intended to remove. I believe that it gives all the power that is necessary. But I can assure Hon'ble Members that I would find it more difficult to defend it from the criticism that it is not sufficiently strong, than I do to-day in defending it against the objection that it is too drastic.

"The Hon'ble Members who oppose the Bill do not deny that in India of late there has been a considerable amount of seditious platform oratory. They cannot but admit that inflammatory oratory working on the minds of an ignorant and excitable people must be a grave source of danger. I cannot see how, after the experience of the past eight months, they can believe that in India with the limitations which the conduct of its inhabitants imposes, this evil can be suppressed by the existing criminal law. Now, what policy do Hon'ble Members who are against me advise that in these circumstances Government should adopt? Their criticism is rather destructive than constructive; but I gather that rather than risk any interference with liberty they would let matters drift, and let sedition run its course in the hope that things will eventually right themselves. I may point out that this was the policy followed for many years in respect of the native press. In Bengal for over thirty years sedition in the press was neither punished nor prevented. During the whole of this time the dissemination of sedition in the press never ceased. Did the forbearance of Government lead to any good result? On the contrary the native press went from bad to worse, until now, when the evil that it does can be ignored no longer, it seems that it is almost impossible by the strictest enforcement of the criminal law to stem a tide of sedition which by inaction has been allowed to increase to enormous proportions. Can it be doubted that the same result will follow in the case of seditious platform oratory if we do not take timely measures to check it?

"In conclusion I ask, who is responsible for the enactment of this measure of repression. The Hon'ble Members who oppose the Bill will say that it is the act of the Government. But I assert most solemnly that they and the party whom they represent are responsible. They profess to abhor sedition, and they are never tired of saying that the party of sedition are few and that they, the moderate party—are many. What has the moderate party done to disavow sedition and to assist the

Government of their country in this emergency? I must regretfully answer that they have done absolutely nothing. What has the Anglo-Vernacular Press done,—the organs which reflect or ought to reflect the opinions of educated Indians? With a few honourable exceptions their chief aim has been to distort the motives and acts of the Government. If the true leaders of educated India, men who have the views that are professed by the Hon'ble Members who oppose this Bill—they are many though they are silent—would only have the courage of their opinions and take a firm stand against sedition, whether on the platform or in the press, the day of sedition would be ended. Let educated Indians who can love their country and yet be loyal to its Government ponder over this. It is they—and not the Government—who have forged this fetter on their country. Let them even now set their faces against sedition and against the wilful misconstruction of the motives and acts of Government, and within six months the Bill which we are now endeavouring to pass into law will become a dead letter."

The motion was put and agreed to.

The Hon'ble SIR HARVEY ADAMSON moved that the word "public" be inserted before the "meetings" in the title of the Bill. He said:—"My Lord, the Bill makes provision for the prevention of only public meetings. The Hon'ble Dr. Rashbehary Ghose is about to move an amendment to the preamble in expression of this. I propose to accept his amendment, and the amendment which I now move is consequential on his amendment to the preamble."

The motion was put and agreed to.

The Hon'ble Dr. RASHBEHARY GHOSE moved that in the preamble of the Bill as amended by the Select Committee, before the word 'meetings,' in line two, the word 'public' be added.

The motion was put and agreed to.

The Hon'ble Dr. RASHBEHARY GHOSE moved that cl. 3 of the Bill be omitted. He said:—"My Lord, cl. 3 of the Bill purports to contain a definition of the expressions 'public meeting.' It says 'the expression "public meetings" means a meeting which is open to the public or any class or portion of the public.' Now, one of the first things that a draftsman learns is that it is always dangerous to attempt to define anything. Statutory definitions seldom stand the test of the Socratic method. Now, it is clear, from what has fallen from Sir Harvey Adamson, that the true meaning of this definition is open to considerable controversy. Speaking for myself I do not think that a meeting of an association like, say, the British Indian Association would be a public meeting, because it is not open to the public or to any class of the public, simply as one of the public or class of the public. But I have reason to think that other persons may take a different view. Under the circumstances we ought to leave it to the Court to say whether a particular meeting is or is not a public meeting, an expression which the Legislature has, and I think wisely, never attempted to define."

The Hon'ble SIR HARVEY ADAMSON said:—"My Lord, I cannot accept this amendment. The Bill contains penal clauses, the construction of which depend on the significance of the term 'public meeting'. In criminal law it is necessary, for the protection of the public, that the language should be precise, in order that people may know whether they are infringing the law or not. From the point of view of the public this is a strong argument in support of the insertion of a definition. From an executive point of view there is also a necessity for defining 'public meeting'. If the Bill is to be really practical, and if proceedings under it are to have any finality, some indication must be given to those who administer it, which will enable them to determine whether a specified meeting is public or private. If no definition is made, the significance of the term 'public meeting' must be built up gradually by case-law. Now, in

a preventive measure designed to meet times of particular stress and to apply to special places that are in a disturbed condition, it is necessary that the authorities should be empowered to take prompt and incontestable action. Undefined action, liable to subsequent vindication by case-law, is particularly inappropriate in circumstances where promptitude is essential. Whether, therefore, from the point of view of the public or the point of view of the executive, it is necessary to define the term 'public meeting'; and I regard the definition as an essential and indispensable part of the Bill. For these reasons I cannot accept the amendment."

The motion was put and negatived.

The Hon'ble DR. RASHBEHARY GHOSE moved that in cl. 3, sub-clause (1) of the Bill, before the word 'class,' in line four, the word 'specific' be added, and the words 'or portion' be omitted. He said:—"My Lord, I have tried to find out the source of this definition; and I think I have found it in a well-known text book on the Law of Libel, in which it is said that the Legislature intended, in the Law of Libel Amendment Act, to include meetings of any specific class or portion of the public, for instance, the rate-payers of a particular ward. I venture to think that if the definition must be retained, that is to say, if it really defines anything, the word 'specific' should be added before the word 'class' so as to make it quite clear that this definition includes only meetings which are open to a specified class of the public. Then again to my mind the word 'portion' conveys no meaning whatever."

The Hon'ble SIR HARVEY ADAMSON said:—"The Hon'ble Dr. Rashbehary Ghose is a great lawyer, but I am afraid that he also shines as a wit. I suspect that one reason for proposing this amendment is to originate a dialectic and sophistical argument on technical legal phraseology, from which the Home Member, pitted against a master of legal casuistry, would come out second best. It is not very apparent what the difference in meaning is between a meeting which is open to the public or to any class or portion of the public and a meeting which is open to the public or to any specified class of the public. I gather that the Hon'ble Member argues that the words 'any class or portion of the public' mean 'any persons'. If that had been the case the language of the Bill would simply have been 'any person.' A class or portion of the public is a readily intelligible phrase and simply means a part of the public as such. On the other hand, it is hard to say what a specific class of the public may mean. It is no doubt intended to exclude bodies of the public which cannot properly be called specific—whatever that may mean. If so, the amendment would defeat the object of the Bill. I fancy that there is some indefinite idea in the Hon'ble Member's mind that 'specific class of the public' would be a legal nut to be cracked with much edification by a Bench of the High Court. I quite appreciate the Hon'ble Member's desire that there should be something in the Bill which will give occupation to lawyers and will conserve the High Court from idleness, but in the interests of finality, which is a very important requisite in a preventive Bill, I prefer a simple phraseology that is readily intelligible, and therefore I regret that I cannot accept the amendment of the Hon'ble Member."

The motion was put and negatived.

The Hon'ble DR. RASHBEHARY GHOSE moved that cl. 3, sub-clause (2) of the Bill be omitted. He said:—"My Lord, that clause says 'a meeting may be a public meeting notwithstanding that it is held in a private place and notwithstanding that admission thereto may have been restricted by ticket or otherwise'. No doubt it is very desirable that persons guilty of sedition should be prosecuted, but, at the same time, we know that it is very undesirable that the police should have access to private houses. I find that in Lord Sidmouth's Act, to which I have already had occasion to refer, was there a proviso which excluded meetings or assemblies held in any room or

apartment. Section 16 of 60 Geo. III and 1 Geo. IV contained the following enactment :—' Provided always, and be it further enacted, that nothing hereinbefore contained shall extend, or be construed to extend, to any meeting or assembly which shall be wholly holden in any room or apartment of any house or building, anything hereinbefore contained to the contrary notwithstanding.'

" Now in this country we cannot be too careful in a matter like this, as the intrusion of the police into a private house is sure to be deeply resented.'

The Hon'ble SIR HARVEY ADAMSON said :—" My Lord, I cannot accept the amendment. A great many public meetings are held in private halls or private compounds. If these were excluded, the Bill would be reduced to a nullity. I am aware that the sub-clause is merely explanatory, but the explanation is necessary. Experience has shown that the Ordinance has been evaded in the two ways mentioned in the sub-clause, *viz.*, by holding meeting in private places and by restricting admission. I think it essential that the Bill should clearly show that these devices do not necessarily exclude a meeting from being a public meeting."

The motion was put and negatived.

The Hon'ble Dr. RASHBEHARY GHOSE moved that cl. 3, sub-clause (3), of the Bill be omitted. He said .—" My Lord, that sub-clause says ' a meeting of more than twenty persons shall be presumed to be a public meeting within the meaning of this Act until the contrary is proved '. This is a new departure from what I take it is the cardinal principle of English Criminal Jurisprudence ; that is. that every presumption ought to be made in favour of the accused. Under the clause in question, if a meeting consist of more than twenty persons, the onus will be on the accused to show that it was not a public meeting ; whereas it ought to be for the Crown to prove affirmatively that a meeting was a public meeting."

The Hon'ble Sir HARVEY ADAMSON said :—" My Lord, I regard the presumption contained in this sub-clause as a vital portion of the definition. Its object is to prevent such evasions of the Ordinance as have been practised in Eastern Bengal. It is intended to meet the case where public meetings are held in private places without notice or permission. The promoters of such meetings are punishable under sub-cl. (1) of cl. 6. An important question in a prosecution under this clause will be whether the persons present are the public. The manner in which those persons were congregated is a fact specially within the knowledge of the promoters. The effect of the presumption is that they will have to prove it. The strength of the sub-clause lies in the incident that in proving it they will be subject to cross-examination. The sub-clause comes to nothing except to shift the onus of proof of this particular fact to the shoulders of those who have special knowledge of it. It does not relieve the prosecution from proving the character of the meeting. It merely relieves them from proving the terms on which the people assembled. If the meeting is a *bona fide* private meeting no harm can ensue to the promoters from being required to prove a fact which they know well and of which they must have ample proof. From the events that have occurred in the proclaimed areas of Eastern Bengal it is abundantly clear that though the Ordinance was sufficient to regulate very large public meetings it had little effect in preventing seditious agitation from being fomented and kept up by small public meetings, and that these meetings have been a grave source of danger in disturbed areas. In order to touch this source of danger we must have something in the definition more drastic than the general terms of the first two sub-clauses. The presumption that we have inserted as sub-clause (3) is intended to meet the case. It gives facilities for a prosecution which would be wanting if the definition were confined to general terms. It is an essential part of the necessary vigour of a Bill which applies only to exceptional places in an exceptional time of public disturbance. I do not anticipate

that the presumption will give rise to many prosecutions. But in giving facilities for a fructuous prosecution in the case of this dangerous and injurious class of meetings which have hitherto, owing to the general language of the Ordinance, been practically free from check, it will I hope act as a preventive of seditious agitation, and will thus greatly facilitate the object of the Bill, which is prevention and not punishment. For these reasons I am unable to accept the amendment."

The motion was put and negatived.

The Hon'ble Mr. GOKHALE moved that in cl. 3, sub-clause (3), of the Bill for the word 'twenty' the word 'fifty' be substituted. He said :—" My Lord, this is the sub-clause of which my Hon'ble friend Dr. Rashbehary Ghose just now moved the omission. It provides that 'a meeting of more than twenty persons shall be presumed to be a public meeting within the meaning of this Act until the contrary is proved.' My reasons for moving that fifty be subsitituted are the following: Firstly, all limits of this character are arbitrary. There is no more merit in twenty than in any other number. In my opinion however fifty would be a more reasonable number than twenty. Secondly, we have the precedent of the English Acts of George III.'s resign. There the number was always fifty. Thirdly, under the number proposed by me ordinary social parties will be excluded. A great deal of apprehension prevails that social parties might be disturbed and that a host might get into trouble if there was any ill-feeing between him and the police. It would be a good thing if ordinary social parties could be put outside the jurisdiction of the clause. Fourthly, the object of this provision is that inflammatory oratory should be suppressed or prevented. Now, I should like to know what public speaker could make on inflammatory speech to twenty people. The material is lacking: the atmosphere is lacking. An address to a meeting of twenty people could not but be more or less a quiet affair. I think therefore that the limit should be fifty and not twenty."

The Hon'ble SIR HARVEY ADAMSON said :—" The numerical limit has been fixed at 20 not with the object of interfering with meetings of 25 or 30, which slightly exceed the limit, but with the object of including meetings in the case of which there can be no manner of doubt that the numerical limit has been exceeded. The proposed amendment would entirely defeat the object of the sub-clause. It is easy for the most casual witness to truthfully say that a meeting which in reality contained 60 or 80 persons is a meeting of more than 20 persons. But it is not by any means easy to say at a glance that such a meeting consisted of more than 50 persons. The effect of substituting 50 for 20 would thus be to make the presumption ineffective in respect of the very class of meetings for which it has been framed. I am unable to accept the amendment."

The motion was put and negatived.

The Hon'ble MR. GOKHALE moved that in clause 4, sub-clause (1), of the Bill for the word 'subject', in line 5, the word 'grievance' be substituted. He said :—" My Lord, the amendment has reference to those public meetings of which notice has been given to the Superintendent of Police or for which permission has to be obtained from the authorities. The words in the clause are: 'No public meeting for the furtherance of or discussion of any subject likely to cause disturbance or public excitement or of any political subject or for the exhibition or distribution of any writing or printed matter relating to any such subject shall be held in any proclaimed area—

(*a*) unless written notice of the intention to hold such meeting and of the time and place of such meeting has been given to the District Superintendent of Police or the Commissioner of Police, as the case may be, at least three days previously; or

(*b*) unless permission to hold such meeting has been obtained in writing from the District Superintendent of Police or the Commissioner of Police, as the case may be',

"I do not understand why the Government should want to control the discussion on any political subject. I should be inclined to propose that the words 'political subject' be omitted altogether. The section would then be confined to subjects likely to cause a disturbance or public excitement. This is all that the Executive want. However, I understand the authorities want to know what is said about any political grievances, in the discussion of which sentiments, actually seditious, or at least bordering on the seditious, are likely to be expressed. From that standpoint I think the requirements of Government would be met if the word 'grievance' were substituted for the word 'subject'.

"If a Professor of a college were to ask more than 20 pupils to his house to discuss a political subject, under the provisions of the Bill, it will be open to a Police officer to represent this as a public meeting. Of course the Courts will probably hold that it was not a public meeting. But if there was any ill-feeling between the Professor and the Police, there might be trouble. I do not see why such wide powers should be taken by the Government; and therefore I suggest the substitution for 'subject' of the word 'grievance'."

The Hon'ble SIR HARVEY ADAMSON said :—"My Lord, in clause 4 it is difficult to choose words so as to please everybody, and arguments might be brought against almost any form of words. As an illustration of this I may mention the fact that in Select Committee, at the Hon'ble Mr. Gokhale's request, we altered in this clause the word 'ill-feeling' to the words 'public excitement'. I have since received a telegram from the Secretary of the Sarvajanik Sabha, in Poona the Hon'ble Mr. Gokhale's own head-quarters, protesting against the substitution of 'Public excitement' for 'ill-feeling on the ground that it makes the penal clauses more dangerously wide. When a place is in so dangerous a condition that it is necessary to declare it a proclaimed area, it is surely not too much to require that notice should be given or permission obtained before holding public meetings in that place for the discussion of political subjects. The effect of substituting 'grievance' for 'subject' would be to unduly restrict the requirements of the clause. The amendment would introduce an absolutely unnecessary uncertainty, and would thus give room for evading the clause. For this reason I am unable to accept the amendment."

The motion was put and negatived.

The Hon'ble DR. RASHBEHARY GHOSE moved that in clause 4, sub-clause (2), of the Bill, after the word 'meeting' in line five, the words and figure 'within the provisions of sub-section (1)' be added.

The Hon'ble SIR HARVEY ADAMSON said :—"My Lord, I accept the spirit of this amendment. But I have pointed out to the Hon'ble Member that exactly the same object will be achieved in a simpler way by substituting the word 'such' for the word 'public' and I understand that he agrees. I therefore move as an amendment of this amendment that in clause 4, sub-clause (2), of the Bill the word 'such' be substituted for the word 'public'."

The amendment was put and agreed to.

The Hon'ble DR. RASHBEHARY GHOSE moved that in clause 5 of the Bill after the word 'meeting' in line six, the words and figures 'within the provisions of section 4, sub-section (1)' be added. He said :—"My Lord, clause 5 does not contain the qualifying words which we find in clause 4; which deals not with public meetings generally, but with public meetings held for the furtherance or discussion of any subject likely to cause disturbance or public excitement, or any political subject. Now, the effect of my amendment, if carried would be to bring clause 5 into line with clause 4. I take it that it is not the object of clause 5 to authorize a District Magistrate or Commissioner of

Police to prohibit a public meeting which had not been convened for the purpose of discussing or furthering any subject likely to cause disturbance or public excitement or any political subject."

The Hon'ble SIR HARVEY ADAMSON said:—"My Lord, the amendment which is proposed would not either add to or detract from the meaning of clause 5. It would not exempt from clause 5 a single meeting. For it is impossible to conceive any meeting that is likely to promote sedition or disaffection or to cause a disturbance of the public tranquillity that is not also a meeting for the furtherance or discussion of a subject likely to cause disturbance or public excitement or of a political subject. Therefore, so far as the construction of clause 5 is concerned, the amendment would be meaningless. But the real object of the amendment is different. The clause gives a discretion to a magistrate. I believe that, as the clause stands, it would not be open to the High Court to question that discretion in revisional proceedings. But the amendment inserts a condition that qualifies the exercise of this discretion, and the object of it is to admit revisional jurisdiction on the question whether this preliminary condition has been satisfied. I doubt whether any High Court would listen to an argument of this kind, even if the amendment were inserted. But that is its object and it is most undesirable to provide the opportunity. Preventive action under this clause has been entrusted only to officers of great experience, and it is essential that their action should be final and decisive. I can accept no amendment that might possibly have the effect of giving a want of finality to the discretion exercised by them. I am therefore unable to accept the amendment."

The motion was put and negatived.

The Hon'ble MR. GOKHALE moved that in clause 9 of the Bill, for the word 'three' the word 'one' be substituted. He said:—"My Lord, this new clause, which was added by the Select Committee, restricts the operation of this Bill to three years. Originally it was proposed that this law should be a permanent addition to the Statute-book, but in the Select Committee the Hon'ble Member in charge of the Bill was good enough to recognize the force of the objection that such a measure should not be permanently added to the Statute-book and he expressed his willingness to limit the period to three years. I think, however, that the limit of even three years is too high, and I think for the present we should be satisfied with one year. The Hon'ble Member has told us that when the Ordinance was promulgated it had to be done in a hurry and that after experience of its working certain suggestions were received from the two Local Governments which had to enforce it. The same thing is likely to occur with this Bill. A year's time may reveal defects which may have to be set right; and therefore, if it is found necessary to maintain this legislation in force longer, the subject should come before the Legislature at the end of a year. I have another ground on which I move this amendment. I have already pointed out that very few of the additional Members have been able to attend this Council meeting. Sir Harvey Adamson seemed to make light of the absence of the Additional Members and considered that, if they had thought this matter was of importance, they would have been present. It was only a matter of travelling a little distance, he said. But I know at what inconvenience I had to travel 1,300 miles just for the sake of taking part in these deliberations. There was no notice given to the Members of this Bill,—the first thing I saw anything about it was in the papers. I may mention that at this Simla Session of the Council Additional Members are not expected to be present. A formal summons is, no doubt, sent us at the beginning of the session, but the Secretary sends a private letter saying that the presence of Additional Members is not necessary. If Government wanted to introduce a measure which has created so much feeling throughout the country, surely some notice should have been sent to Additional Members. But no notice was sent and it cannot therefore be said that the absence of Additional members indicates that they have no interest in

the measure. That the public has been greatly stirred is shown by the many telegrams and protests that there are being received even now against the measure. In view of these facts, in view of the necessity of giving the public a proper opportunity to express their views, and in view of the desirability of setting right any defects that might be revealed in the course of a year, I propose that the limit should be fixed at one year instead of three."

The Hon'ble SIR HARVEY ADAMSON said :—" My Lord, in restricting the life of the Bill to three years a great concession has already been made to public representations. Hon'ble Members are very sanguine if they think that the necessity for this Bill will have passed away in a year. I have already pointed out that if their party will loyally, by deeds as well as words, assist the Government of their country, the need for the Bill may soon disappear. But no indications have yet been given that this assistance will be forthcoming. I am afraid that it is impossible for me to accept the amendment."

The motion was put and negatived.

The Hon'ble SIR HARVEY ADAMSON moved that the Bill, as now amended, be passed.

The Hon'ble MR. GOKHALE said :—" My Lord, I had not intended saying more than just a word at this stage of the Bill and that only by way of an appeal to your Excellency, but certain remarks have fallen from the Hon'ble Member in charge of the Bill with regard to the responsibility for this legislation, which make it necessary that I should say a few words in reply, as it is impossible to allow those remarks to pass unchallenged. The Hon'le Member says that the responsibility for this Bill really rests with those who are described as the moderate section of the Reform party in India. Now I for one have never been in love with the term—moderates and extremists. There is at times a good deal of moderation among some of those who are called extremists and on the other hand there is no small amount of what is the reverse of moderation among some who are known as moderates. However, I fear the terms as they are now in use will stick and for purposes of my present observations I will take them as they have been used by the Hon'ble Member. My Lord, I think it is most unfair to put the responsibility for such sedition as may be in existence in this country on what is called the moderate party. In the remarks which I made at an earlier stage of to-day's proceedings, I went at some length into the question as to how the present situation had come to be developed. I do not want to go over the same ground again, but there are one or two things which I would like to mention and emphasise. My Lord, when the officials in this country talk of sedition, they do not always mean the same thing. Different officials have different ideas of sedition. There are those who think that unless an Indian speaks to them with ' bated breath and whispering humbleness ' he is seditious. There are others who do not go so far, but who still think that any one who comments adversely on any of their actions or criticises the administration in any way or engages in any political agitation, is guilty of sedition. Lastly, there are those who take a larger view of the situation and recognize that the term sedition should be applied only to those attempts that are made to subvert the Government. Now I have no wish to say anything on this occasion about the first two classes of men. I will take sedition in the sense in which it is used by the third class, and I will say this, that if such sedition has come into existence, it is comparatively a recent growth—a matter of the last three or four years only—and the responsibility for it rests mainly, if not entirely, on the Government or rather on the official class.

" My Lord, from 1885, *i.e.*, since the close of the beneficient Viceroyalty of Lord Ripon, the Congress has been endeavouring to secure some much needed reforms in the administration. The present form of the administration is about fifty years old. We have long outgrown that now and the fact is admitted even by officials. But while they

admit in a general sort of way that changes are necessary, they have some objection or other to urge against every change that is proposed. The result is that there has been hardly any movement forward in spite of our efforts all these years and the patience of the more impatient among my countrymen has at last given way. In the earlier years of the Congress, there used to be some room for a hope that the desired changes in the administration would come. After Lord Ripon came Lord Dufferin, who was not unfriendly to the Congress, though he was somewhat suspicious and he gave us the Public Service Commission. After him came Lord Lansdowne. He too was on the whole friendly, though he was over-cautious, and he gave us the first Reform of the Legislative Councils. Then came Lord Elgin and from his time the fortunes of the Reform party have been at a low ebb. Lord Elgin's term of office was darkened by plague, famine and frontier Wars and towards its close came repressive legislation against the Press. Then came Lord Curzon. He was a consummate master of glowing periods, and during the first two years of his regime, high hopes were raised in the country. These hopes, however, were soon dashed to the ground on account of a series of re-actionary measures, which he forced on the people. This disappointment, coupled with the sense of constant irritation which we felt during the last three years of his rule, proved too much for a section of the Congress party and they began to declare that their old faith in England's mission in this country was gone. Then came the Partition as the proverbial last straw. The people of Bengal did all they could and all they knew to avert that Partition. Hundreds of meetings were held all over the Province, prayers and protests poured in upon the Government, and the people used every means in their power to prevail upon Lord Curzon to abandon his idea. But he simply treated the whole agitation with contempt and carried his measure through. The men who are called moderate pointed out again and again to the Government the unwisdom of its course. They warned them that, the measure, if forced on the people, in spite of all the furious opposition that was being offered to it, would put too great a strain on their loyalty and that some of them at any rate would not be able to stand that strain. And events have happened as they had been foreseen. The Hon'ble Member complains that open disloyalty is now being preached in Bengal. But no heed was given to the words of the moderates while there was time. And now, when the mischief has been done, the Hon'ble Member turns round and wants to throw the responsibility for what has happened on us!

"As regards the question of the moderates denouncing the extremists, it is not such a very easy matter. In the first place, I am not sure that there is such an absence of disapproval or remonstrance as the Hon'ble Member imagines. But secondly, such denunciation is largely a question of temperament. All people do not always denounce whatever they disapprove. I will answer the Hon'ble Member's question in the matter by a counter-question. There are certain Anglo-Indian newspapers which constantly revile Indians. Has the Hon'ble Member ever denounced anything that has appeared in their columns? I am sure he and many others like him disapprove what often appears in the columns of the *Civil and Military Gazette* or the *Englishman*. But have any Englishmen in any place ever met together and expressed their condemnation of these papers? I hope the Hon'ble Member will now see that the question of denouncing those whose conduct you disapprove is not such an easy one. Moreover, with us there is an additional reason. We do not want to make confusion worse confounded, there are already enough divisions in all conscience in the country and we do not want to have a fresh cause of contention if we can help it. But let me say this to the Hon'ble Member. Whether the moderates remain silent or denounce the extremists, it will make very little difference in the hold which the extremists are acquiring on certain minds of India. There is only one way in which the wings of disaffection can be clipped and that is by the Government pursuing a policy of steady and courageous conciliation.

"My Lord, the appeal that I want to make to-day is this. Now that the Government have armed themselves with these drastic powers of coercion, I would humbly say to your Lordship—keep these powers in reserve, do not use them immediately as far as possible, and—conciliate Bengal. My Lord, there is the root of the trouble. With Bengal unconciliated in the matter of Partition, there will be no real peace, not only in Bengal, but in any other Province in India. The whole current of public life in the country is being poisoned by the bitterness engendered in Bengal over this question of partition. My Lord, I am not a Bengalee, and therefore I can say these things with the less reserve and without any fear of being misunderstood. The people of Bengal are the most emotional people in all India, and they will far sooner forget a material injury than one to their feelings. Now in this matter of the Partition—whatever its advantages or disadvantages, I am not concerned with that just now—there is no doubt whatever that their deepest feelings are involved They feel that they have been trampled upon. And while they feel like that, there can be no peace. Already great alienation has taken place between them and the Government, and every day the position is growing worse. The refusal of the sufferers in the recent disturbances to appear before Mr. Weston to give evidence is a significant illustration of the change that is coming over Bengal. The Government propose to meet this change by a policy of repression. My Lord, knowing the people of Bengal as I do, I venture to predict that they *will* not be thus put down by force. The Bengalees are in many respects a most remarkable people in all India. It is easy to speak of their faults; they lie on the surface. But they have great qualities which are sometimes lost sight of. In almost all the walks of life open to Indians, the Bengalees are among the most distinguished. Some of the greatest social and religious reformers of recent times have come from their ranks. Of orators, journalists, politicians, Bengal possesses some of the most brilliant, but I will not speak of them on this occasion because this class is more or less at a discount in this place. But take science or law or literature. Where will you find a scientist in all India to place by the side of Dr. J. C. Bose or Dr. P. C. Roy? Or a jurist like Dr. Ghose? Or a poet like Rabindra Nath Tagore? My Lord, these men are not mere freaks of nature. They are the highest products of which the race is regularly capable, and a race of such capability cannot, I repeat, be put down by coercion. One serious defect of national character has often been alleged against them,—want of physical courage—but they are already being twitted out of it. The young men of Bengal have taken this reproach so much to heart that, if the stories in some Anglo-Indian papers are to be believed, so far from shrinking from physical collisions, they seem to be now actually spoiling for them. My Lord, if the present estrangement between the Government and the people of Bengal is allowed to continue, ten years hence there will not be one man in a thousand in that province who has a kindly feeling for Englishman. Then the Government will have on their hands a tremendous problem, for there are thirty-three millions of Bengalees, and the unwisdom and the danger of driving discontent underground amidst such a population will then be obvious. My Lord, I appeal to your Lordship to stanch this wound while there is yet time. I know the question is now complicated by the fact that the Mahomedan population of East Bengal except certain educational and other advantages to accrue to them from Partition. No real well-wisher of India can desire that any of these advantages should be withdrawn from them, for the more the Mahomedan community progresses, the better for the whole country But surely it cannot be beyond the resources of Statesmanship to devise a scheme, whereby, while the expected advantages are fully secured to the Mahomedans, the people of Bengal may also have their great grievance removed. My Lord, considerations of prestige which have so far stood in the way of this work of conciliation may continue to obstruct it. I cannot understand how a Government, with the vast strength of a mighty Empire behind it, will suffer in prestige by such a line of action. But one thing is certain. Your Lordship has it in your power to set this matter right. And you will earn the blessing

not only of Bengal, but of all India, if this source of continued bitterness and ill-feeling is removed from the land."

The Hon'ble DR. RASHBEHARY GHOSE said :—" My Lord, all I wish to say in connection with the unrest in Bengal to which reference has been made is that to talk of an administrative measure as a settled fact is as reasonable, if I may say so without disrespect, as to talk of an irrevocable law."

The Hon'ble MR. BAKER said :—" My Lord, I shall not detain the Council more than a very few minutes, but I should like to add a few words to what fell from the Hon'ble Home Member at an earlier stage of the discussion on the general policy of this measure.

" We have been told to-day with characteristic force and eloquence that there is little or no sedition in India, and that those persons whose acts have led to the present legislation or a class insignificant both in numbers and influence. A similar argument has I think been used in a part of the press : but so far as I have observed it only acquired prominence after it became known that legislation was in contemplation. Prior to that time, the tendency of those organs of which I am thinking seemed to be rather to magnify the extent of the disorder, and to represent large tracts of the country as seething with discontent. If, as our critics allege, we are inclined to exaggerate the evil, are they quite sure that they themselves are not going to the opposite extreme ?

" It is a matter of common knowledge that there is a section of the press, published largely but not exclusively in Bengal, which has openly endeavoured to excite hatred of the Government and advocated its subversion ; which has sought to make the administration impossible, and has denounced all Indian servants of the State as traitors to their country. During the last two or three years, perhaps even during the last few months, these organs have increased in numbers, in circulation, and in the virulence and audacity of their attacks on the established order. If those by whom these journals are supported are really so insignificant and negligible as is represented, how is it that the latter are able to appeal to so large and expanding a circle of readers ?

" Not for a moment would I seek to make too much of what is in great part frothy declamation : but I find it impossible to admit that the residuum is too trivial to notice. In the *Civil and Military Gazette* which reached Simla this morning there is a telegraphic summary of a Resolution just issued by the Bengal Government, in which the Lieutenant-Governor directly ascribes the rioting and disturbances which occurred in Calcutta on the 2nd and 3rd October—and which have been referred to by several speakers to-day—to the violent writings and speeches of irresponsible agitators during the past few months.

" Sedition in the Press can be reached by the ordinary law of the land. But that is only one weapon in the armoury of disorder. Not less dangerous, and more difficult to touch, is the seditious harangue, delivered often by men who are skilled in the arts of the demagogue, not for the legitimate ventilation of any real or fancied grievance, but to work upon the immature, ill-informed minds of their hearers ; to instil into them feelings of hatred and hostility towards the State, and to incite them to the open use of force and violence for its disruption. Are we to believe that these addresses always fall on deaf, unwilling ears? I wish that I could think so. But I fear that a sufficient answer is to be found in the rioting and disorder which have only too often followed in their train, in the grotesque yet mischievous organizations known as the National Volunteers, in the forcible interference with the freedom of purchase and sale of foreign goods, and

in the constant resort to social ostracism of those who adhere to a different way of thinking.

"I am not in the least afraid of driving sedition underground. To men of the class we have now to deal with, men who make it their business to fish in troubled waters, publicity and self-advertisement are as the breath of their nostrils : and when these are gone, more than half the attractions of the game are gone with them.

"It is a matter of profound regret to every member of Your Excellency's Government that occasion should have arisen for legislation of this character, even of the very limited scope of the present Bill. It is true that for a short time, and within any areas to which it may be extended, it will imply some restriction on the free right of public meeting. But Hon'ble Members may rest assured that, while we hold that an evil exists which must be grappled with. it is utterly foreign to our intention to cast the smallest imputation on the loyalty or good faith of those multitudes who are, as we firmly believe, wholly out of sympathy with the propaganda at which this measure is aimed : and I will venture to express the confident hope and expectation that the great mass of the population of India will never have reason to know that any such enactment has found a place in the Statute-book."

The Hon'ble SIR HARVEY ADAMSON said :—"We are now approaching the concluding stage of this long discussion, and as these are the last words that I will have to say on the subject of this Bill, I propose to drop controversy and to devote the few remaining moments at my disposal to allaying any apprehensions that loyal and law-abiding men may feel, lest they should suffer harm from the provisions of this Bill. If there be any fear that the Bill will be worked oppressively, I would point to the fact that it is no new measure. For nearly six months it has, in the shape of the Ordinance, been in force in two Provinces, and not a single act of oppression in connection with its operation has been cited. The Ordinance contained almost the same penal provisions as the Bill, and I cannot remember a single prosecution that resulted from it. When a great evil has to be averted, no loyal citizen can reasonably complain of being put to some slight inconvenience for the public good. In framing the Bill the greatest care has been taken to protect the law-abiding public from unnecessary inconvenience. The Bill provides that public meetings shall be really public meetings, in the sense that their proceedings shall be liable to be reported, and no legitimately conducted public meeting can reasonably object to this provision. The preventive and punitive provisions apply only to meetings the proceedings of which are either unlawful in themselves or are dangerous to the public tranquillity owing to public excitement in special localities These provisions have been devised with the greatest care so as to restrict preventive powers to officers of high standing and large experience, and to exclude entirely action of an oppressive nature by the police or by officers of immature judgment, and thus to minimise the risk of unnecessary interference with loyal and law-abiding people. Then as to the range of the operation of the Bill, the Government of India have retained it entirely in their own hands, and I can assure Hon'ble Members that the whole circumstances will be well weighed before the Bill is extended to any Province. But I admit that there is one unpleasing aspect of this Bill. It may be a sentimental aspect—but it is a painful one. It is a regrettable thing that a repressive measure is being placed on the Statute-book of India. I think it is this feeling rather than any fear of the consequences of the Bill, that has chiefly impressed loyal men who dislike the Bill. I fully share in the feeling myself. But we have regretfully been driven by necessity to the enactment of this measure. So far as possible we have mitigated the bitterness by restricting the life of the Bill to three years."

The Hon'ble MR. GOKHALE asked for a division, and the Council divided as follows :—

Ayes—9	*Noes*—3
The Hon'ble Mr. T. Gordon Walker.	The Hon'ble Mr. G. K. Gokhale.
The Hon'ble Mr. S. Ismay.	The Hon'ble Dr. Rashbehary Ghose.
The Hon'ble Mr. J. O. Miller.	The Hon'ble Tikka Sahib Ripudaman Singh of Nabha.
The Hon'ble Mr. J. F. Finlay.	
The Hon'ble Sir Harvey Adamson.	
The Hon'ble Major General C. H. Scott.	
The Hon'ble Mr. E. N. Baker.	
The Hon'ble Mr. H. Erle Richards	
His Excellency the Commander-in-Chief.	

So the motion was carried.

His Excellency THE PRESIDENT said :—" Before I in any way attempt to discuss the merits of the measure we have had before us, I feel that I shall very fully express the views of my Hon'ble colleagues in saying that they have only asked for the powers it confers and accepted the policy it embodies with the gravest feelings of responsibility and after much thoughtful deliberation, and that though we have considered legislation to be a matter of urgent necessity, we have been most anxious, notwithstanding the remarks which have fallen from the Hon'ble Mr. Gokhale, to afford the Indian public ample time for an expression of opinion upon the line of action we have decided to adopt. On the 18th October Sir Harvey Adamson introduced the Bill, and in doing so told us that the Government of India had been unwillingly forced to the conclusion that, when the Ordinance expired, it was necessary, not only to continue the powers it gave, but to define more clearly certain of the provisions it contained. He has to-day entered still more fully into the history of the Bill, and as very ably explained to us its various clauses and the Amendments suggested in the Select Committee's Report. There is therefore no reason for me to attempt to further elucidate its technicalities, and I would only venture to recapitulate to Council the course of events and influences which have led up to our present position. That position the Hon'ble Mr. Gokhale and the Hon'ble Dr. R. Ghose have fully dealt with, and I can assure them I gladly recognise their honesty of purpose and the sincerity of their endeavours to advance the political claims of their fellow-countrymen, but I am afraid my Hon'ble colleagues have allowed their enthusiasm for the cause of political reform to blind them to the necessities of the moment, and that they have failed to recognise that the first duty of any Government is the maintenance of law and order and the protection of the people entrusted to its charge. They would lead us to believe that we have been frightened by a phantom, that we have accepted the vapourings of a few agitators as evidence of dangerous sedition, and that by the Act which we have passed we are imputing disloyalty to the masses of the people of India,—that I emphatically deny,—but at the same time I refuse altogether to minimize the meaning of the warnings and anxieties of the last few months.

"We cannot afford to forget the events of the early spring—the riots at Lahore and gratuitous insults to Europeans, the Pindi riots, the serious view of the Lieutenant-Governor of the Punjab on the state of his Province, the consequent arrest of Lajpat Rai and Ajit Singh, and the promulgation of the Ordinance, and, contemporaneously with all this, a daily story from Eastern Bengal of assault, of looting, of boycotting, and general lawlessness, encouraged by agitators, who, with an utter disregard for consesequences no matter how terrible have, by public addresses, by seditious newspapers, by seditious leaflets and itinerant secret agents, lost no opportunity of inflaming the worst passions of racial feeling, and have not hesitated to attempt to tamper with the loyalty of our magnificent Indian Army. I hope that Your Excellency as Commander-in-Chief will, on my behalf as Viceroy and as representative of the King Emperor,

convey to His Majesty's Indian troops my thanks for the contempt with which they have received the disgraceful overtures which I know have been made to them. The seeds of sedition have been unscrupulously scattered throughout India even amongst the hills of the frontier tribes. We are grateful that it has fallen on much barren ground, and can no longer allow the dissemination of unlimited poison.

"That is the position the Government of India have had to face—that is why we have had to tighten the curb and shorten the reins. That is why we have felt compelled to provide ourselves with a weapon against insidious attacks.

"The Bill is aimed at the inaugurators of dangerous sedition, not at political reform, not at the freedom of speech of the people of India.

"But there is another side to all this. I am well aware of the growing strength of political hopes and ambitions in this country, and I welcome them as the natural results of the education British administrators have done so much to introduce and to encourage. I have said so over and over again, and I deny the accusation of a disregard of the growing influence of the educated classes of India. Far from wishing to check the growth of political thought, I have hoped that, with proper guidance, Indian capacity and Indian patriotism might earn for its people a greater share in the Government of their country. They have proposals before them now which I trust may greatly contribute towards that end. The Government of India would be blind indeed to shut its eyes to the awakening wave which is sweeping over the Eastern world, overwhelming old traditions, and bearing on its crest a flood of new ideas. We cannot check its flow, we can but endeavour to direct it into such channels as may benefit the generations that are to come.

"We may repress sedition—we will repress it with a strong hand—but the restlessness of new-born and advancing thought we cannot repress. We must be prepared to meet it with help and guidance. We must seek for its causes.

"In the first speech I made on my arrival in this country I said that I looked 'for assistance in furthering that sense of security and rest throughout the length and breadth of India so indispensable for the development of her internal resources, and her over-sea trade, for the careful consideration of her vital necessities and the general happiness of her people.' Is it too much to hope that the leaders of Indian political thought will give that assistance to the Government of India? I can assure my Hon'ble colleagues, the Hon'ble Mr. Gokhale and the Hon'ble Dr. Rashbehary Ghose, that a heavy responsibility rests on the shoulders of Indian reformers, for it is upon their support and upon their influence with their fellow-countrymen that British administrators should largely be able to rely.

"I will not believe that the great bulk of the educated community are opposed to law and order, and I do believe that the masses of the Indian people render loyal homage to their King-Emperor. Moreover, I repudiate once for all the insinuation that has sometimes reached me, that the Government of India has, for political reasons, favoured the interests of one community against those of another. It has been the pride of the British Raj to balance without prejudice the claims of nationalities, of religions, and of castes; it will continue to do so, and I am grateful for the numerous expressions of loyalty I have received from Ruling Chiefs, and from the leaders of influential Associations of every denomination throughout India.

"I have merely sketched the conditions which appear to me to surround us, and I come now to the business of to-day—To the question of the utilisation, so to speak, of the Act which we have just passed. It seems to have been very generally assumed that, because it is applicable to the whole of India, it is to be universally enforced. That has never been the intention of the Government of India. The Bill, as the Hon'ble Sir Harvey Adamson has explained, was framed to meet the peculiar circumstances of certain localities and to take the place of the Ordinance when it lapsed automatically

on the 10th November. The Ordinance has been in force for six months in the Punjab and in Eastern Bengal, and it has been our duty to consider, in consultation with the Lieutenant-Governors of those Provinces, to what extent we need now rely upon the Act. Sir Denzil Ibbetson has replied that quiet is restored in the Punjab, and that he has no need for extra powers, and Sir Lancelot Hare has asked for them only in the district of Bakarganj. With the exception of that district therefore there will be now in India no legislation in force that did not exist before the promulgation of the Ordinance. I earnestly trust that there will be no further need for an appeal to the powers of the Act, but should the necessity unfortunately arise, the Government of India will not hesitate instantly to support the demands of its Lieutenant-Governors.

"I am very far from saying that our anxieties have passed away,—there is much cause for watchful thought as to the state of affairs in many parts of India, and especially in Eastern Bengal—the future happiness of that Province rests with her people and their leaders. We cordially extend to them a helping hand, and I hope they will not hesitate to take it."

Simla, 1st Nov. 1907. T. W. RICHARDSON.

Offig. Secy. to the Government of India, Leg. Dept.

APPENDIX D.

THE CONTINUING ACT, 1910.

(ACT XVII OF 1910.)

RECEIVED THE ASSENT OF THE GOVERNOR-GENERAL ON THE 6TH AUGUST, 1910.

An Act to provide for the continuance of the prevention of Seditious Meetings Act, 1907.

WHEREAS it is expedient to provide for the continuance of the prevention of Seditious Meetings Act, 1907; It is hereby enacted as follows:

Short title. **1.** This Act may be called the Continuing Act, 1910.

Continuance of Act VI of 1907. **2.** The prevention of Seditious Meetings Act, 1907, shall be continued until the thirty-first day of March 1911, and shall then expire, unless further continued.

APPENDIX E.

Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 to 1909 (24 & 25 Vict., C. 67, 55 & 56 Vict., C. 14, and 9 Edw. VII, C. 4).

The Council met at Viceregal Lodge, Simla, on Saturday the 6th August 1910.

PRESENT:

His Excellency THE EARL OF MINTO, P.C., G.C.M.G., G.M.S.I., G.M.I.E., Viceroy and Governor-General of India, *presiding*.

and 35 Members, of whom 28 were Additional Members.

CONTINUING BILL.

The Hon'ble MR. JENKINS said:—"My Lord, the Seditious Meetings Act of 1907, will expire in ordinary course on the 31st October this year, and the course which we

should take with regard to it has been a matter of anxious consideration. I will briefly explain the reasons which have induced us to come to the decision, first of all that the Act should be continued, and secondly that it ought not now to be continued beyond the 31st March 1911. Before the Bill was prepared, Local Governments were consulted, and the Local Governments are generally independent in their opinions. One of the great difficulties which the Government of India generally experience when Local Governments are consulted is in reconciling the differences of advice given by them. On this occasion the Local Governments are absolutely unanimous; and especially the Lieutenant-Governors of Bengal and Eastern Bengal, who declared that the continuance of the Act is absolutely necessary to the preservation of law and order in their Provinces. Now, we have no intention of sheltering ourselves behind the Local Governments. The decision is ours; it is based upon our own convictions of what is necessary in the conditions of the time. At the same time the Government of India would be incurring very grave responsibility if they refused to accept the recommendations of the Local Governments in a matter of this kind. For my own part, I am free to admit that when a Lieutenant-Governor like Sir Edward Baker, of wide and liberal sympathies, who knows his province thoroughly, declares that the continuance of this Act is absolutely necessary in Bengal, I should feel myself bound to surrender my opinion to his, even if my own opinion were different; and we have decided therefore that the Act should be continued. Next, as to the date to which it should be continued. There is a precept of old standing which directs that contentious business should not be taken up in Simla, and we have reason to apprehend that this is a contentious measure. That precept was issued when Simla was remote and inaccessible; conditions have changed greatly; the stress of business has become very considerable; and it is possible that the position may have to be reconsidered. Nevertheless, as long as the precept is in force, we feel ourselves bound to observe it as far as possible. There is another consideration which has weighed with us; there will before long be very great changes in the constitution of the Government of India, and although the life of the Government is continuous, we think it proper that the ultimate decision in this matter should rest with the Government of India as it will be constituted at the session which will be held at Calcutta. We are by no means pledged to continue this measure beyond the 31st March 1911. On the other hand, neither are we pledged to allow the Act to lapse. I consider that it is greatly to be desired that this Bill should be regarded as a measure of convenience, as an *ad interim* measure intended to bridge over the time between the Simla session and the session in Calcutta, and that no discussion should be raised which will have the effect of even appearing to commit the Government of India or individual Members of Government to any opinion relative to the further continuance of the Act. If it is finally decided that the Act ought to be continued, there will be ample opportunity for discussion in Calcutta. If, on the other hand, it is decided that it ought to be allowed to lapse, we shall have escaped a debate which, however carefully conducted, cannot fail to do a certain amount of harm. My Lord, I now introduce the Bill to provide for the continuance of the Prevention of Seditious Meetings Act, 1907, and move that it be taken into consideration."

The motion was put and agreed to.

The Hon'ble MR. GOKHALE said:—"My Lord, this Bill may at first sight appear to some to be a comparatively modest measure, inasmuch as all that it ostensibly seeks to do is to prolong by just five months more the life of an Act which in the natural course of things would expire on 1st November next. And the very brief speech with which the Hon'ble Member has introduced his motion to-day is calculated to lend support to this view. Now, my Lord, if this had been really all that the Government had in view—even then, I should have deplored the action of Government,

for, as I understand the situation, what the country taken as a whole needs to-day above everything else is the opportunity for things quietly to settle down again to the normal; and, in providing this opportunity, responsibility rests as much on the Government as on the people. And in my humble judgment, a proposal at a time like the present to renew even for a few months a repressive measure of such exceptional severity as the Seditious Meetings Prevention Act, when the country is comparatively quiet and is getting quieter every day, is not likely to hasten that return to a normal frame of mind on the part of the people and that restoration of normal relations between the people and the Government which every true well-wisher of the country must so ardently desire. But, my Lord, I do not think that this Bill is merely a proposal to continue an expiring Act for a few months longer, and nothing more. I think there are grave reasons to fear that it is rather intended to be the prelude to another proposal to place the Act permanently on the Statute-book after the formality of a discussion in full Council at Calcutta next March. It seems clear to me that if the Government had been anxious to govern the country without the aid of this Act—if even they had wanted to find out if they could so govern it—they would have welcomed the opportunity, instead of regretting it, of the Act lapsing next November, conscious of the fact that, if the necessity arose, they could re-enact the measure in a single day, and re-enact it probably with the support of a strong body of public opinion. The Statement of Objects and Reasons says that 'on the unanimous advice of Local Governments the Government of India are convinced that the continuance of the Act for the present is essential to the preservation of the peace,' and therefore they are continuing it for five months. I am not surprised, my Lord, taking human nature as it is, that the Local Governments want to retain the powers which the Act confers upon them. That does not by any means show that the condition of the country is such that the Local Governments should have those powers. What is there, for instance, to-day in the condition of the Madras Presidency that should make the Government of Madras wish to have these powers? And yet we find Madras anxious along with the other Local Governments to retain these powers! It is therefore only ordinary human nature, and I do not think that we need attach any special importance to it. I wish, however, that the Council had had an opportunity of seeing those opinions of Local Governments. In the case of ordinary Bills such opinions are as a rule supplied to Members. I asked for these papers two days ago under rule 13 of the Rules for the conduct of legislative business, but the Government have not seen their way to comply with my request. But whatever be the grounds on which the Local Governments have based their advice, one thing is certain, that if they have asked for a continuance of the Act, they cannot have asked for its continuance for five months only; no one could, I think, calculate the requirements even of repression with such nicety! It is true that when the question comes up again for consideration, the personnel of the Government of India will have undergone a considerable change. But I do not think it is possible to find any comfort in that. In the first place, a Viceroy entirely new to the country is far less likely to take a line of his own in dealing with what we have been told is the unanimous opinion of Provincial Governments than one who has been five years in the country; and secondly, we have already before us the fact that, though not one of Your Lordship's colleagues of 1907 in the Government of India is to-day a Member of the Government—a fact which significantly illustrates the rapidity and completeness with which the personnel of the Government changes in this country under the existing system—that has not made any difference as regards the present decision to continue the Act after October next. I take it therefore that during the next Calcutta session the Government will come forward again with a proposal either to further extend the period of the Act or, what is even more probable, to place the Act permanently on the Statute-book. Now, my Lord, we all know that when once the

Government have made up their mind to adopt a particular course, nothing that the non-official Members may afterwards say in Council is practically of any avail in bringing about a change in that course. Our only hope of preventing a decision which we consider to be fraught with serious injury to the best interests of the country is in any opportunity we may get to state our objections before the decision has been arrived at. And it is because the Bill before us gives us such an opportunity, as also because I am against the proposed continuance of the Act even for five months, that I deem it my duty to offer what resistance I can to the motion which the Hon'ble Member has just submitted to the Council.

"My Lord, three years ago, when this Act was hurried through the Council at this hill station, only three non-official Members were able to attend the meeting. But among those there was my distinguished friend, the profoundly learned and ever-brilliant Dr. Rash Behary Ghose. To the criticism which he then offered on the various provisions of the measure, I think it is unnecessary to add anything even to-day. The Act admittedly confers dangerously wide powers on the Executive, which, if used at all, are almost certain to be abused, and which must in practice paralyse all activity in the country. Meanwhile the Government already possess in the ordinary law of the land ample powers to meet all reasonable requirements, not only for punishing but also for preventing what has been called seditious or dangerous oratory. Under the Criminal Procedure Code the Government can break up, and even prohibit, meetings likely to prove dangerous to the tranquillity of the country, and they can bind down individuals. And the provisions for punishing seditious utterances do not certainly err on the side of leniency. I really do not see what more is wanted if the Government are to show a reasonable regard for the elementary rights of the people. Unless the idea is that nowhere in the country shall there be any deliberation or discussion or expression of opinion except on lines approved by the Government, and that too with their previous permission, I do not understand the necessity of arming the Executive with the vast powers which the Act confers. That these powers can be and as a matter of fact have been used, or rather abused, for such a purpose may be seen from the fact that this year three ordinary district conferences in East Bengal were prohibited by the District Magistrates. My Lord, I listened carefully to the answer which the Hon'ble Mr. Earle gave yesterday to a question of my friend the Hon'ble Babu Bhupendra Nath Basu on this subject. In spite of that answer, I feel bound to say that, in my opinion, the action of the authorities was not justified; and I hold that the prohibition of the conferences was a serious abuse of the powers which the Act confers upon the Executive. Such conferences have been held for years past, not only in Bengal but all over the country. They are strictly on constitutional lines, and so far they have nowhere given rise to any trouble whatever. The Hon'ble Mr. Earle in his reply said that the prohibited conferences proposed to deal with subjects which did not concern the districts only. Now I would like to know what right or authority the Hon'ble Member had to lay down a proposition like that. A district is part of a Province; it is also a part of the whole country; surely the people of a district, if the Government are willing to allow them even a small amount of patriotism or public spirit, are entitled to take an interest in the affairs of their Province and their country; and I say it is absurd to insist that a district conference should confine itself only to matters that concern that district. But, my Lord, it was not only these district conferences that were thus interfered with. In one of the districts, a meeting proposed to be held by members of the depressed classes for the discussion of a social grievance was also disallowed. I understand that these classes in Eastern Bengal have some difficulty in obtaining the services of barbers, and these people wanted to hold a meeting and consider what arrangements they could make for getting themselves shaved. Surely that was not a subject in regard to which the powers conferred by the Act should have been exercised

by the district authorities! And yet this was actually done under this Act. I understand that this prohibition was afterwards withdrawn. But that it should ever have been exercised shows the liability to grave abuse of these powers. In some places the District Magistrate went the length of claiming the power to determine the actual wording of the resolutions proposed to be passed at public meetings! Such a claim reduces a public meeting to a mockery and a farce, for the resolutions then express the views not of the people assembled in the meetings but of the district authorities! My Lord, I am quite prepared to admit that circumstances may arise when even such drastic powers as the Act confers may be necessary in order to stem the flood of wild, irresponsible oratory dangerous to public peace. But I do not think that such circumstances exist at the present moment anywhere in India.

"My Lord, I can conceive of circumstances in which it may be necessary to put even such powers into the hands of the Executive as the only way of checking the flood of wild and dangerous utterances that may be threatening the peace or tranquillity of the country. But I do not think such circumstances exist in any Province at the present moment. And, in any case, it is to my mind intolerable that the whole country should be indiscriminately placed under such Draconian legislation. And this brings me to a suggestion which I made in the Council three years ago, when the Seditious Meetings Act was under discussion, and which I wish to repeat to-day, namely, that if at any time such legislation is found to be necessary in any Province it should be undertaken by the Provincial Government in the Council of that Province, and not by the Government of India for the whole country. At present what happens is this. The alleged needs of the Province whose condition is the worst furnish the standard and determine the character of the legislation with which not only that Province but the rest of the country is to be saddled. Now, this is gravely objectionable, and to my mind it constitutes a most serious grievance. A simple remedy lies ready to hand, namely, to require each Provincial Council to undertake in such matters its own special legislation according to its needs. This will have the additional advantage of ensuring a full discussion of the condition of the Province before the legislation is passed. I claim on this subject the support of the Hon'ble Member whom we in Bombay have known to be a strong advocate of Provincial decentralization. It may be said, as Sir Harvey Adamson did three years ago, that, though such legislation may be passed for the whole country, it may not be extended to a Province without a careful consideration of all its circumstances by the Government of India. How illusory this safeguard is was seen last January, when we woke up one morning to find that the Seditious Meetings Act had been extended indiscriminately to every Province by a single stroke of the pen. My Lord, I assure the Council that there is a very real fear in the minds of even the most thoroughly law-abiding citizens that this Act, when put in force, places them in a position of serious danger, and they further feel that they may be exposed to the danger any moment without their having done anything to deserve it. A few utterances on the part of thoughtless young men or even a single utterance of that character may suffice for a whole district being suddenly proclaimed, and once it is so proclaimed every inhabitant of that district is at once put under what may be termed 'police rule.' No. twenty persons can then meet even for the most innocent social purpose without being presumed to have gathered in a public meeting held without the permission of the authorities, and any one may at any moment find himself accused of having taken part in such a meeting and wrongly punished or otherwise harassed in a variety of ways. And with the kind of the police we have in this country the fear of wanton or malicious harassment is not wholly imaginary. My Lord, I am aware that the question of the character of the Indian Police has now assumed a form when it is difficult to discuss it without rousing a certain amount of feeling. There

is no doubt, however, that as a class the police are not trusted by the bulk of my countrymen, and that innocent people often go about in dread of what they may do, and the position has grown worse since the formation of what is known as the Criminal Investigation Department. This is largely the result of two causes—first, the quality of the material from which our police-force is drawn; and secondly, the lack of a spirit of self-assertion among the people generally. The Government no doubt have of late done a good deal to secure a better type of recruits for the force, but the improvement in this respect can only be gradual. Moreover, as long as the people themselves do not know how to take better care of themselves as against the police, things are bound to continue pretty much the same as they are at present. What is absolutely necessary, however, is that the Government should not put additional powers into the hands of the police until a substantial improvement has taken place in their character and traditions. My Lord, it has been well said that more depends upon the manner in which a law is administered than upon the law itself. This is true of every law generally, but it applies, I think, in a special degree to repressive measures, and I feel bound to say that our experience in this direction has not been particularly encouraging. Take for instance, the Press Act of last February. If ever there was a measure which should have been administered with the utmost care and tact and restraint, it was the Press Act passed last session at Calcutta. This was necessary to avoid all needless irritation. It was also due to those non-official Members of this Council who, in their desire not to add to the difficulties and anxieties with which the Government were then confronted, tried to go as far as they could in support of the measure. I grieve to say, however, that in most Provinces these obvious considerations have not been kept in view in working the Act. I will not now refer to those cases in which security was demanded from hold concerns when they presented themselves for a mere formal change in their registration, in spite of distinct pledges to the contrary given both in the Statement of Objects and Reasons and in the speeches of Members of Government in this Council. It was no doubt the result of what must be regarded as defective drafting, and I am glad to note that it has now been set right to a great extent by executive action on the part of Government. But there have been cases in which heavy securities have been demanded from old concerns without specifying what their offence was, and for some time past a regular sedition-hunt has been going on in some of the Provinces. Hardly a day now passes without some obscure sheet or pamphlet or old book being dragged forth from oblivion, and notified first by one Provincial Government and then by another as forfeit to the authorities. Now much of this is, to my mind, altogether futile, and it only tends to keep the Press Act in unnecessary and unpleasant prominence before the country. I think the exceptional powers conferred by the Press Act should be very sparingly drawn upon, and then, too, to meet only serious cases of objectionable and dangerous writing. I do not deny that the Act has exercised a restraining influence in some quarters where such influence was most necessary. But as against this we must place the irritation that is being continuously caused in the country owing to the feeling that the Act is being harshly or unjustly applied. The worst case in which the powers of the Act have been clearly misapplied is, to my mind, that of Mr. Mackarness's pamphlet. Mr. Mackarness had sent me a copy when the pamphlet was issued. and I had also seen the articles as they had at first appeared in the *Nation*. I can understand the objection that Mr. Mackarness had made a one-sided presentment of the case, or that he had not done justice to the efforts which the Government have recently been making in the matter of police reform, but that only means that some one else should have published a pamphlet in reply. Had anybody told me before the pamphlet was prescribed that the Government contemplated applying the provisions of the Press Act to it, I should have declined to believe the statement. And now that the pamphlet has actually been prescribed, I can only regard the action taken with deep humiliation and pain.

"My Lord, it will, I am convinced, be a grave blunder to place the Seditious Meetings Act permanently on the Statute-book or to propose a further lease of life to it after March next, and I earnestly implore the Government to abandon the idea if they have it. In 1907, when the Act was first passed, there was this to be said in its favour, that the situation in the country was daily growing more and more anxious and no one knew where things stood or whither they were drifting. We were then moving on the upward grade of our troubles and the outlook was dark and threatening. To-day, however, the situation is far different. The air has been largely cleared, there is a much easier feeling throughout the country, and there is no doubt that the country is now on the downward grade of its anxieties. The change has principally resulted from two causes —first, the Reform Scheme in its final form, which despite obvious imperfections constitutes an important step forward for my countrymen, has eased in no small measure the tension of the situation; and secondly, the criminal excesses of thoughtless young men have shocked the bulk of the people into a greater realization of their own duty to the cause of law and order. I think, my Lord, it is now daily becoming more and more clear that the wild elements which by their reckless careering have been a source of so much anxiety, have now well nigh exhausted themselves, and the return of the country to a normal state of things is therefore now only a question of time; and nothing, I respectfully urge, should be done by the Government which will in any way retard this return. Not the heavy hand of coercion, but the gentle touch of conciliation and sympathy, of forbearance and oblivion—this is what the situation requires; and I earnestly trust these healing influences will be forthcoming in ample measure to obliterate bitter memories and start the country again on a career of prosperity and progress."

"The Hon'ble NAWAB ABDUL MAJID said :—"My Lord, notwithstanding all that has been said by the Hon'ble gentleman who has just spoken, I am one who thinks that the Bill for the continuance of the prevention of Seditious Meetings Act should be passed into law. The object of the said Act, when it was passed in 1907, was to prevent public meetings which were likely to promote sedition or to cause a disturbance of public tranquillity. Now it cannot be denied that the Act had a salutary effect in preventing such meetings. Those orations and addresses which were likely to cause disaffection and to disseminate sedition were checked; while meetings and speeches which had no aim but peace and public good of the country were nowhere stopped. The very provision in the said Act, that the Act was to apply to a proclaimed area, shows that the Act was not to be applied at random or at the mere wish of any officer. The Act was to apply only when an area was proclaimed by the Local Government. It is obvious, my Lord, that no Local Government will proclaim or has proclaimed an area unless after full inquiry and information it came to the conclusion that public good and security of the country demanded an area to be so proclaimed and the Act to be applied. Further, we have a provision in the Act that any notification proclaiming any area was to remain in force for six months. In other words, the people of such a proclaimed area were given an opportunity to reform themselves. If their behaviour were good, then the notification had no effect after six months. My Lord, I reiterate these facts to shew that the Act does not affect those who are peacefully and loyally disposed, but it affects those only who have a guilty intention.

"But, my Lord, it is said that the Act, when it was passed in 1907, was for three years only, and there is no occasion for its continuance now. To decide this question it is necessary to compare the situation in the country in 1907 with that prevailing in 1910. If there is no unrest in the country, if there is a guarantee that no disaffection and no feeling of disloyalty will be spread in the country if the Act were repealed, I for one, my Lord, will at once give my opinion for the repeal of the Act. But can it be said that there is no unrest in the country? Is there a guarantee that public meetings held and public speeches delivered by those who are not well-disposed will not be used

as instruments for the spread of the propaganda of evil ideas among the people at large? Restrictions such as the Act provides are checks on the facilities for the spread of such ideas. Remove them, my Lord, and you will find platform orators delivering their noxious sentiments to the people again. My Lord, I think that the state of the country is not such that any safeguards which are for the peace and tranquillity of the country may be removed. It is not more than six months now that we in this Council passed the Press Act, and why? Because the situation demanded it. The Press Act was passed to check the spread of anarchical and rebellious ideas among the people through the medium of the Press, just as the Seditious Meetings Act was passed to prevent those very ideas reaching the people through the instrumentality of public meetings and public addresses. My Lord, both stand on the same footing. If the Press Act was justified then, why is not the continuation of the Seditious Meetings Act justifiable also? The situation in the country in last February was well summed up by the learned the Hon'ble Mr. Gokhale when he said in his eloquent speech on that occasion:—

'It is not merely the assassinations that have taken place, or the conspiracies that have come to light, or the political dacoities that are being committed, that fill me with anxiety. The air in many places is still thick with ideas that are undoubtedly antagonistic to the unquestioned continuance of British rule, with which our hopes of a peaceful evolution are bound up; and this is a feature of the situation quite as serious as anything else.'

"My Lord, has the situation so eloquently and concisely described by the Hon'ble Member ceased to exist or not? I say not. Assassinations of the same atrocious nature we may not have, but dacoities and conspiracies cannot be said to have ceased yet. It was only the other day that *Yuguntar* leaflets were detected. Dacoities have taken place. Suspects said to be members of the terrorist society are still prowling about. I say therefore that the situation existing in February has not changed for the better.

"I say that the country is not in a fit condition to dispense with the safeguards provided to stop the spread of sedition and anarchy in this country.

"But assuming that the situation has improved in the country, assuming that the people have realized their position and responsibilities, and that the evil-doers have given up their evil intentions, the question arises, why is it so? Could not such results be traced to such preventive measures as the Seditious Meetings Act and the Press Act? In other words, such measures have proved successful, and the success gained by them is a very strong reason by itself that such measures should be continued. My Lord, whichever side of the question one may look to, I think in my humble opinion measures which have the effect of preventing masses and youths of the country from falling into the pernicious influence of those who want to distrub the peace and good Government of the country must remain on the Statute-book. My Lord, I vote for the passing of the Bill into law."

The Hon'ble KUNWAR SIR RANBIR SINGH said:—"My Lord, it is with reluctance as well as with pleasure that we have met here to-day to discuss the advisability of continuance of the Act for the prevention of holding seditious meetings in India—reluctance because such a necessity should ever have arisen in India where sedition was unknown and where loyalty and absolute submission to the throne was the watch-word of every human being; pleasure because it places the civilised and loyal subjects of the British Government out of the reach of the professional agitator and safe-guards the interests of the law abiding people. As has already been explained by the Hon'ble Member in charge of the Bill, certain circumstances in the year 1907 obliged the Government of India to enforce such an Act in the country. Its continuance up to the

31st March next is now advised by Local Governments and considered necessary in the interests of the people.

"I strongly support the Act of the Government in this respect and am confident that my Hon'ble colleagues will join with me in the belief that the prevention of seditious meetings is called for in the interest of the people of India. This is not the time to discuss at any length the harmful consequences of such meetings in the country. I therefore close my remarks with the hope that the continuance of the Act will be agreed to by all Hon'ble Members."

The Hon'ble RAO BAHADUR R. N. MUDHOLKAR:—"My Lord, I regard with great regret and disappointment the resolve of Government to bring forward this measure and to obtain its enactment. When the last session terminated without the introduction of a measure to continue the Act of 1907, and when there was nothing said in this Council to give an indication that Government contemplated taking any action in the matter, and especially when we found no announcements made of any legislation in that direction, there was a general feeling of relief and satisfaction in the country.

"My Lord, I most heartily and earnestly wish that Government had allowed that Act to expire by efflux of time and had not taken any steps for the introduction of this Bill. My Lord, I am not behind any one in this hall, or out of it, in my anxiety to secure the cause of peace and order and law, and I fully recognize that they ought to be maintained above all things. I fully agree with what has been said by my Hon'ble friend the Nawab Sahib here, and my Hon'ble friend the Kour Sahib here, about the necessity of putting down seditious meetings by taking stern measures against all things calculated to disturb public tranquillity. My Lord, we fully recognise that there are occasions when summary powers ought to be given to the executive authorities of prohibiting all meetings likely to promote sedition or likely to bring about a disturbance of the peace. My Lord, what we contend is this, that the ordinary law which exists in the country is quite capable and adequate for this purpose. My Lord, it was pointed out in the debates which took place in 1907 that the Criminal Procedure Code and other general Acts were fully capable of ensuring that tranquillity without which society cannot exist. We have first of all that very powerful section (section 144 of the Criminal Procedure Code) by which a District Magistrate, a Presidency Magistrate, a Subdivisional Magistrate, or any Magistrate authorised either by the Local Government or a District Magistrate or Chief Presidency Magistrate can stop and prohibit any meeting which is likely to bring about a disturbance of the public peace and to result in a riot or affray. The order can be passed *ex parte*, cannot be appealed against and is capable of remaining in force for two months *proprio vigore*; and, with the sanction of the Local Government, its period can be extended indefinitely, or it might even be made permanent. My Lord, this is a powerful section.

"We have then Chapter IX of the Criminal Procedure Code, sections 127 to 132, under which any Magistrate or any officer in charge of a police-station may command an unlawful assembly or any assembly of five or more persons likely to cause a disturbance of the public peace to disperse. If they do not disperse the whole lot of them can be taken into custody and marched off to hajut, and if the police are not sufficient to cope with a large assembly they can call upon private citizens to help them in their apprehension. If civil force is found not adequate, the Magistrate can requisition the military. My Lord, this is a very ample provision. There are certain Police Acts like the Bombay City Police Act, the Calcutta Police Act, the Calcutta Suburban Police Act, in which power is given to the Commissioner of Police to prevent harangues and prohibit meetings likely to endanger peace or cause contempt of lawful authority. There are then the sections in Chapter VIII, Criminal Procedure Code, which enable Magistrates to take substantial security from propagators of sedition and

breakers of peace. My Lord, those are provisions which quite enable Government to preserve order and peace and obedience to law. My Lord, I would beg Your Lordship and this Council to take into consideration just for themselves whether this law has not, as a matter of fact, been found quite sufficient for the purposes of the country. This Act, which was passed in 1907, was preceded by an Ordinance in certain Provinces. We shall omit the Ordinance period, but this Act has been in force for two years and nine months, and during that period there has been no occasion whatsoever in which the Act was required to be put into operation anywhere except in four districts. Throughout the rest of the country the Act, as it were, was merely nominally in existence. It was a dead-letter; and yet, my Lord, the year 1907, as also the year 1908, were years of considerable anxiety, of very great tension and difficulty. And yet the Government and the people have been able to tide over that difficult time without resorting to the armoury supplied by the Act. My Lord, I can speak with considerable knowledge of a Province which was not free from this kind of trouble. We had not in that Province the same tension and the same difficulties that, for instance, existed in 1907 in Eastern Bengal, and exist to some extent there even now. We had nothing of the kind that existed in the Punjab towards the beginning of 1907, but there was a considerable effervescence of what may be considered as undesirable agitation in which advocates of *swarajya* and boycott held forth to large meetings attended by thousands. My Lord, all that has stopped. Both the Central Provinces and Berar are now as quite as they were previous to 1906 or 1905. Not only that, there are no meetings even for legitimate objects held which are attended by any large section of the public. Now this change, or call it improvement—I am one of those who call it improvement, because undesirable agitation is not good for any one—this improvement, my Lord, has been effected without this Act being drawn upon. In fact, the notification putting the Act into operation was not issued for the Central Provinces till January 1910. There was only one occasion on which the Local Government thought it might be desirable to have the Act put in operation in the Central Provinces; but the Government of India at that time had left Simla and had not assembled in Calcutta, and the head of the Administration then took counsel and he found that the existing law was quite capable of achieving the object which he wanted. There was an assemblage convened to meet at Christmas, which was considered, by the authorities responsible for good Government, undesirable, and they wanted to prohibit it. The thing was done by asking the District Magistrate of Nagpur to issue a notice under section 144 of the Code of Criminal Procedure, and the meeting was prohibited.

My Lord, there have been certain associations not considered very desirable; these associations have been wound up. There have been institutions which, with proper reason, were considered as more or less suspicious. All these institutions have been closed. All this, My Lord, has been achieved by a few prosecutions instituted under sections 124-A and 153-A of the Indian Penal Code, first of all, by some use, and that not on a very large scale, of the security sections of the Code of Criminal Procedure, and more than all this by the tactful and firm conduct of a police-officer of high standing, who I am glad to see enjoys the confidence of Government and who is present in this hall. My Lord, he knew what was the real significance of the situation; he had moved amongst the people: he had spoken to those whom his information led him to suppose were mixed up with these matters, and his method was to use tact, logic and a firm hand; and with these three weapons, my Lord, we have a restoration of the normal state of things in those Provinces. My Lord, if these methods have succeeded in a Province in which there was considerable agitation of an undesirable kind, and if we find that in other Provinces there has been a return—I shall not say in regard to everything, but in regard to what may be considered the bulk of the people, who were carried away by the visionary doctrines of these people—to a normal state of things without this Act being put into

operation, my Lord, the whole case for the Act has been taken away. It proves that the ordinary law is quite capable of preserving the interests of good Government and peace and that this measure is utterly unnecessary.

"My Lord, if this Act was directed only against seditious meetings, and if in terms it had referred to meetings which are likely to produce a disturbance of the public tranquillity, or meetings in which seditious language is believed to be likely to be employed, then those who are against this Bill might have seen their way to accord it their support. But, my Lord, the most offensive part of the Act is the total prohibition of all political meetings without a police permit. My Lord, this is undesirable even in the interests of good government, and it is undesirable from the Government point of view. If noxious doctrines are to be properly exposed, if undesirable propaganda are to be exposed in their true colours, this can be done only by a free opportunity being given to those who can explain the true methods to be followed and the true doctrines to be adopted. But, my Lord, those who would hold these meetings also stand in the same position practically as the advocates of *swaraj*. I do not know, if I called a meeting of that kind, a police-officer may not come and show his attentions to me. My Hon'ble friend Mr. Gokhale has spoken of the attentions shown to him. I believe he does not stand single in that; I have also to say the same thing of myself. I was going to Madras for a conference, which His Excellency the Governor of the place was going to attend; I was asked to take the chair on that occasion, and all the way from Berar to Madras I was followed by an inspector of police. My Lord, this is the way in which the police work, and if persons whom Government have been pleased to honour, persons whom the Government are pleased to consult on different occasions, if they are so suspected by the ordinary police sub-inspector, what can be the position of those who do not occupy the same position?

"My Lord, we feel that this law is a slur as much upon the Government as upon us. It proclaims to the world that the British Government in India does not like political meetings, and is afraid of having any discussion on any political question. My Lord, as a matter of fact, the Government has not done this, but unfortunately they have allowed to remain on the Statute-book a law which lends colour to this misapprehension. Is that fair to the Government? Is it just to the Government? It creates irritation in the minds of the people, and it raises an altogether wrong impression about the temper and attitude of the Government of India towards the population. The law is practically a dead-letter; it has not been put in force, and for aught we know it might never be put in force; why then keep it at all on the Statute-book? And, as I have said, if there was the least danger of not maintaining peace and order without such a law as that, then we would have been constrained to say yes, such a law should be kept. My Lord, I have, I believe, shown by testimony coming from official records that peace and order can be maintained without such a law, and I therefore submit with due deference, with the utmost respect, that Government were not well advised in asking for the introduction of this measure. My Lord, we have the authority of the Local Governments, but Local Governments have attributed, I am afraid, to this Act a potency which it is not entitled to. The change in the country, the effect which has been produced by various kinds of things, these have been attributed to this Act. My Lord, the improvement in the situation which is seen now is due, as I have said, partly to the enforcement of the ordinary law of the country, but more than that it has been due to the revulsion in the minds of the bulk of the community, and even of that small section of the educated community which was theoretically drawn to the foolish vapourings of certain persons; it has created a revulsion in the minds of these men even against the murderous proceedings of the school of anarchy, that has brought to the side of Government men who were lukewarm. The bulk of the people have been always loyal to Government, and with this revulsion the field for sedition has become very much

curtailed. Another powerful influence which has been at work has been the policy of reform and conciliation which Your Lordship's Government has been able to put into operation.

"My Lord, these are the three things which have produced improvement in the present situation, and it is not this Act at all, which is practically a dead-letter, except in one district alone in Eastern Bengal. It has only been recently extended to the Punjab. My Lord, again the futility of such a measure is practically shown by the admission made by Sir Denzil Ibbetson in 1907. When the Act of 1907 was passed he said he did not see any necessity for extending that Act or rather for putting the Act into operation in the Punjab; the condition of the Punjab had quieted down. My Lord the excitement in 1907 was due to peculiar causes; that excitement has passed away. In the Punjab the excitement was due to well-grounded apprehensions entertained by the agriculturists about the effect of the Colonisation Act and the enhancement of the canal dues. Immediately Your Lordship's Government vetoed that Act and the people were saved from the threatened enhancement, an improvement in the situation followed. Even in Eastern Bengal I do not think the condition is so bad as it was in 1907. The partition of Bengal was the chief grievance. But the extraordinary state of things which existed in 1907 was is no small measure due also to the temper and attitude of the Local Government at the time. With a change in the personnel, even in Eastern Bengal, a considerable improvement has followed.

"My Lord, I cannot shut my eyes to that gaunt spectre of political assassination which has appeared on the horizon and the conspiracies to subvert the British rule which have recently come to light. My Lord, I would ask Your Lordship and the Hon'ble Members to see whether these murderous deeds and these conspiracies can at all be prevented by an act of this kind. The murderers and conspirators do not hold public meetings and do not hold forth in public; they carry on their nefarious projects in secret conclave, and these deeds and these conspiracies cannot at all be reached by this Act. We are perfectly agreeable that the hands of Government should be strengthened, that the authority of the executive Government should be strengthened, for putting down sedition and putting down lawlessness and disorder. We ask over and over again for the Government to see whether our experience of recent years has not demonstrated that that course can be maintained with the existing law. My Lord, in that case there is no necessity for this thing which casts a slur both upon Government and the people. My Lord, the Government and people constitute one family. With our Hindu ideas we consider that the Government occupies the position of the father of the family. We do admit with great sorrow, with great humiliation, that there are some members of the family who have become wild, turbulent and exceedingly undutiful. My Lord, we appeal to you as head of the Government whether, for the faults of a practically microscopic minority, it would be just, it would be fair, it would be politic, to treat all the members of the family equally, and to visit the anger upon all the members of the family. My Lord, Your Lordship's regime has been associated with reform and conciliation, and that same policy should, we humbly submit, be carried on even in regard to this Act."

The Hon'ble LIEUTENANT MALIK UMAR HAYAT KHAN said:—"My Lord, in my speech of the 30th of March last I drew the attention of the Council to the gravity of the present situation and urged the necessity of taking preventive measures to meet it. If I remember right, I had emphasised that point, and I am glad to find now that the Government has made some movement in the direction indicated by me by introducing this Bill.

"The measure is a most necessary one. But I am compelled to call attention to the undesirability of renewing the Act at frequent intervals This causes unpleasant comment and arouses irritation, and in my opinion it is now time to place the Act

permanently on the Statute-book. The law itself can harm no one and does not come into force unless a breach of it is committed. It will be seen that this Act is only applied to a few districts at present, and this is due to its having a great effect as a preventive measure.

"It is plain that extraordinary outbursts of crime require extraordinary remedies, and abnormal political agitation must be checked by abnormal measures. My Lord, I mean to direct my remarks mostly against the *anti*-Government class of agitators, and I hope my colleagues will not come forward to defend them.

"These meetings against which this Act is directed are of two different kinds:—*Firstly*, they take the form of ordinary gatherings or demonstrations in which no particular speeches are delivered. This form is objectionable because it excites the feelings of certain experienced youths and leads to trouble. *Secondly*, such meetings as are convened to hear the utterances of sharp platform speakers, who with full knowledge of the law use guarded words but manage to convey a meaning which produces undesirable effects on the mind of the public. Frequently enough their less clever followers when trying to reproduce the same ideas are unable to command the same moderated language, they let the 'cat out of the bag' and are caught.

"The consequences are of two sorts:—*Firstly*, if a speaker wants to produce a certain effect and uses guarded language so as to convey his views to his audience without getting into the clutches of the law, he can produce as bad an effect by his guarded words as by an openly seditious speech. *Secondly*, if he makes such a speech unaware of its consequences, though I am not prepared to believe that this can often happen, even then it is objectionable since it produces a bad effect. Some years back, when the Ordinance was not in force, it was noticed that there was a wave of revolt among the students in schools and colleges, a wave which spread from the eastern to western portion of India and was the direct result of such meetings and speeches. The consequence was the occurrence in the Punjab of series of deplorable riots in certain towns though I am glad to remark that the predominant zamindar class was not much affected. I have said that this law will injure nobody. That is true. But of course it will be objectionable to a class of irresponsible people who have no standing of their own, and have no stake in the land, their only possession being the power of speech and there only ambition being to bring themselves into prominence by pretending to voice the opinions of their small communities and by claiming the right to set forth their own theories, which may be followed by their half-educated audience. They attempt to gain popularity by criticising in season and out of season every reasonable measure of the Government. My Lord, we hear many references made to history, to different nations, countries, times and circumstances, and also hear the quotations from the remarks of great men, which were made under particular circumstances, at particular times and for particular purposes, and thus these references and quotations cannot be applied here. It is said that history repeats itself, but I can positively say that properly speaking there have never been any two identical cases in the world, and when the causes are not exactly the same their effects cannot be possibly the same.

"I hope when the present measure is opposed with such unsound arguments they will not be considered of any substantial importance.

"I don't profess to say that Government has never made a mistake, but I do find it difficult to believe that these people can prove that everything which Government does is and must invariably be wrong.

"In fact, some people instead of using their discretion and judgment merely take up a line which will please their ignorant and inexperienced audience and thus try to gain authority as popular leaders.

"But, my Lord, what is the invariable result? They arouse disaffection, they stir up alien feelings, and in the trouble which follows who suffers? Not they themselves, but the ordinarily quiet and peace-loving subjects of His Majesty. It is these unfortunate and innocent people who pay the price of the agitation. The agitator, as we have seen from many recent cases, nearly always manages to escape, and those who preach sedition by speaking or writing, if punished at all, receive much milder punishment than the deluded youths whom they use as their tools.

"It is most desirable that this Act should continue in force without interruption until it finally becomes permanent law. Most of us here realise the necessity of this measure, but there are people here as well as in England who cannot negotiate the difference between a party system such as that in England where they have two parties of the same nation who both want to govern their own country to the best of their ability and only have minor differences of opinion, and the state of affairs in India where they have two entirely separate communities with extremely divergent ideas as to the right administration of the country. In the latter case there is something more than a mere difference of views, and no encouragement should be given to the people who make it their business to stir up opposition between the two classes. The people who get the chance of expressing an opinion on the administration of the country are :—*Firstly*, the graduates and others who complete their studies here or in England and who have from their childhood been occupied in the study of English literature, etc., in order to pass their examinations and have accordingly lost all touch with the actual state of affairs in India since they have never had the chance of coming into close contact with the real feelings of the people; *secondly*, certain members of Parliament who have either never been to India or have only visited it for short periods, and have got into wrong hands and have thus been misled. The best proof of their being misled is the fact that they persistently oppose the sections of the loyal class and support that other class which, since it has sprung into prominence, has brought with it sedition and unrest, and whose very existence may to some extent be responsible for the cause of disaffection and discontent.

"These classes cannot be said to voice the feelings of the people at large who are politically contented and don't want to be tampered with.

"My Lord, if I be allowed to say so, no sufficient steps have so far been taken to discourage the class I have referred to. The law is capable of the most useful effects, but it can only be really useful if properly applied.

"It is no use to prohibit small meetings of no great significance and leave untouched those which are the real curse of the country. We might as well try to kill an enemy by bruising his leg or cutting his little finger. To do so is only to exasperate him and to render him more dangerous. There is but one course before us—to go at the head and to sever it.

"Most dangerous of all in my opinion are those meetings which have been termed national or in which nationality is preached, and which delude many people into the idea that they comprise all India or are calculated to unite the diverse sections of the community into a nation that may resent being governed by another nation and may have a strained feeling against authority established by law and a fine administration the like of which India has never had before.

"My Lord, I have made these remarks as I consider it my duty to speak the plain truth. I want to be heard here and also to be overheard in England. I am well aware that my opinions will appear distasteful to certain so-called leaders and orators of some sections and they may try to contradict my views; but truth is great and it will prevail.

"Having had my chance of speaking I think I may be unable to answer the criticisms which may follow my remarks, but I hope there may be Members of my opinion who may answer the critics. My Lord, there is a class in India waiting to see what the Government will do: we expect action, and a firm and resolute one, to stamp out sedition and disaffection from the country. Let Government take decisive steps and all the best elements in India are with it.

"My Lord, I should like to remark at the end, as I had done once before that whenever there is a great opposition, the public generally think that the opposing party is in the right and Government won't listen to their arguments, and this idea creates a bad effect; but I hope this time they will also see that we, the supporters of the Bill, also represent big classes, and they will form a conclusion after judging the whole debate and not any particular speech of a favourite speaker and will also bear in mind that if we had known that the measure was unnecessary and the Government was wrong we would have been the foremost to oppose it.

"My Lord, with these remarks I strongly support the measure."

The Hon'ble Mr. MADGE said:—"My Lord, the limits which have been suggested by the Hon'ble mover of this Bill for the range of our present discussion, with reference to the issues that ought to be raised here, have been so freely transgressed by almost every speaker that I hope I shall not be held to have disregarded the suggestion made if I echo the hope that has been already expressed that, not only will this Bill be passed, but that it will not be very long before the provisions which it extends find their proper and permanent place in the criminal law of the country. Before I give my reasons for this hope, which I shall do very briefly, I should like to say, no doubt to the great astonishment of my Hon'ble friend Mr. Mudholkar, that I share in the disappointment that has been so strongly expressed by him. But the sources of our disappointment are as poles as under. If I am disappointed, my Lord, it is because the eloquent speakers who have already addressed you have not been careful to trace the relations of cause and effect between this Bill and the Press Act in respect of their influence upon the seditious spirit that was spreading throughout the country. It is all very well to say that the suppression of that spirit is attributable to the ordinary law of the land. I respectfully submit that it is nothing of the sort; and that a Government which came before the people with both its hands full of concessions would not have passed such a law as this if the ordinary law of the land had sufficed to suppress anarchy and sedition. It is because the ordinary law of the land entirely failed that the Government was forced into this position. And to anybody who stands up here and says that this is going too far, and that it is irritating, and all that sort of thing, I wish to say as gently and as respectfully and in as friendly a way as possible that you are like a physician who takes up a dangerous case, who finds that his diagnosis is correct, that his treatment is effective, that the promise of it is not small, and who finds that he is soon arriving at success, but who suddenly stops short and says, 'not because I have failed but because I have succeeded, I shall shut up.' To me action of that sort appears to be wholly unreasonable. If this measure, or rather the combined action of them both, has succeeded in suppressing the evil spirit that was spreading, through the Province to which I belong all over the country, I think the Government is acting with wise prudence, in the interests of the people more than in its own interests, in bringing in legislation of this sort, the effect of which appears to me to be wholesome. It has been said that the powers that are to be entrusted to the Executive are dangerous. But they do not strike me as being more dangerous than the powers that are entrusted to a successful surgeon. The lancet is a very dangerous thing; but when employed in skilful hands, it secures life oftener than it produces death; and I have had no reason from the Government's action to suspect either its skilfulness or its gentleness. I am

not a blind advocate of the Government at all. I have watched its proceedings for some time past with great care, and I have had no reason from any of its actions to suspect either its skilfulness or its gentleness. Indeed, my Lord, I may say from what I have heard down below of the temperament of the Government, that so far from being thought at all unreasonable and cruel, its action has sometimes been thought to be sentimentally weak. I do not here endorse that sentiment; but I only repeat it here for the purpose of balancing the remarks that have already been made. And now, if I may be allowed in a few words to give my reasons for the hope that I have expressed: they are briefly these. Crime is crime, whatever you may say about it. The differentiations of crime are of degree and not of kind. All law more or less desires to protect society and the public peace, and the breach of any law tends both to the disruption of the public peace and the breaking up of all the best interests of society. It has been said that the murderous hand of the assassin is not the result of public proceedings. I take occasion to deny the accuracy of that remark in the most emphatic manner. The hand of the assassin is often moved by speeches full of *double entendre*. I have made it my business to study some of them. I happen to understand the languages of the country, not perhaps as well as every Indian, but better than most Europeans. I have detected the *double entendre* of many insinuations that have been publicly made with such carefulness as to guard the speaker but to send fire into the hearts of susceptible people. My Lord, that is a public proceeding one end of which may be out of sight but the other end of which is exposed to everybody. Remarks have been made about the action of the police whom it is no business of mine to defend. I have studied the police systems of several countries in the world, and I think it may be laid down generally that the average morality of the police, with a few exaggerations one way or the other, is the morality of the country to which they belong. I do not make this remark offensively, but as a fact of sociology which must be impressed upon the conscience of everybody who observes and thinks. Very well, my Lord, if that is the case, I wish next to refer to some remarks that have been made about patriotism. I think true patriotism ought to be directed, not so exclusively to political advancement, as towards raising the moral tone of the people. I speak as a member of a very small community which is flanked on all sides, and I make it my business to abuse their vices privately but to defend their virtues as much as possible in public. I think that is the right attitude for most people who wish to act as patriots to take; and I think that if the great talent and the great energy that have been displayed by so many political speakers had been directed to wiser channels, there is 'a stream of tendencies, not of ourselves, making for righteousness,' and if any man throws himself into that stream, he shall be allowed to do things for the uplifting of his people. I have found that in a very humble way and on a small scale, and if on the larger scale which is presented to my Indian friends, many of whom I love and respect exceedingly, they would take that line of action and raise the morale of the country and of its police, as it is open to them to do, I think very little complaint would remain about the conduct of the police. In conclusion, my Lord, I wish to say that I cannot understand on what sound principle of civilized jurisprudence there can be any advocacy of intermittent legislation against crime. If a law is good in itself, it ought to stand recorded always; and I think much less irritation would be caused by the permanence of a law of that sort than by its being continually brought up before the Legislative Council."

The Hon'ble MR. SACHCHIDANANDA SINHA said:—"My Lord, on 1st November 1907—when the Seditious Meetings Act was under the consideration of this Council—the Hon'ble Sir Harvey Adamson, speaking with the authority of a Home Member, propounded a curious theory in regard to the presence of Non-Official Members of this Council at Simla on the occasions of debates on contentious measures like the one under

discussion to-day. He said :—'If Indian Members considered the matter to be of vital importance, they would no doubt have undertaken the journey which would have deposited them at the doors of the Council Chamber. Their absence proves that either they approve of the Bill or at least do not so strongly disapprove of it as to consider their presence necessary.' I do not know, my Lord, if Sir Harvey's views are shared, to any extent, by the Hon'ble Mr. Jenkins, but lest my absence should give rise to any such unwarranted presumptions as those formulated by the late Home Member, I have deemed it to be my duty to come up here to-day, to be able to place before the Council the views of that important section of the people of the Lower Provinces whom I have the honour to represent in this Council.

"My Lord, there can be no two opinions that the measure under consideration is one of an exceptional character, and I submit that an extraordinary law, meant for special exigencies, should not be allowed to remain on the Statute-book when the circumstances that justified it no longer demand it. It cannot be doubted that the Seditious Meetings Act—the operation of which we are asked to renew to-day for a period of five months, after its becoming inoperative by efflux of time—is a measure of exceptional and extraordinary character, as it seriously curtails the liberty of public discussion and vests, in the hands of our police, powers of interference with the public, which even when exercised with the greatest tact, are bound to produce irritation, annoyance and inconvenience. Under the Act as it stands, power is given to the police to interfere with all kinds of gatherings of twenty or more persons, whether they be in a public place or a private house. Religious and social gatherings are not excepted, so far as the powers of the police are concerned. It is obvious that such extensive, discretionary powers vested in a body of men like our police—of whom the most charitably-disposed persons cannot draw a flattering picture—can only result in constant conflicts between them and large and important sections of the people. And for one seditious meeting that the police may be able to suppress, acting under the powers conferred upon them by this Act, there are sure to be several instances when, owing to misdirected zeal on their part for ferretting out sedition, respectable and law-abiding subjects of His Majesty, the King-Emperor, are likely to be subjected to unnecessary and unjustifiable annoyances, in their efforts to carry on perfectly peaceful and legitimate, constitutional agitation for political reform and which we claim as one of the indefeasible and most cherished rights of all British subjects. Such, my Lord, has actually been the case in East Bengal, where conferences, as to the peaceful and constitutional character of which guarantees had been given by the organizers to the District-officers, were not allowed to be held.

"The Seditious Meetings Act was passed to put down—to quote the words of Sir Harvey Adamson—the 'acute disorder that prevailed in the Punjab and in Eastern Bengal,' and it was admitted by the Government that it was 'a repressive measure of considerable potency.' The question, to my mind, is that, even assuming that such a measure was necessary at the time it was enacted, in the interests of law and order, whether the present situation is not so improved as no longer to require the continuance of the Act, which is a serious menace to the exercise on the part of the people of one of their most valued rights as British subjects, namely, the right of public association for purposes of free and open discussion of public questions on constitutional lines. Now, unless, my Lord, I have misappreciated the significance of the assurances given by Your Lordship on the occasion of inaugurating the last session in Calcutta of this Council, as also the statements made recently by the Under Secretary of State for India in the House of Commons, it is clear that the situation in the country has materially improved of late, and if things are allowed to proceed as they are, without the application of fresh irritants in the shape of such legislation as the one before us to-day, the chances are that matters will take an even yet more favourable turn and the apprehension of any

widespread or serious trouble, as the result of allowing liberty of public discussion, does not seem to me to be well-founded. The Punjab—one of the two unfortunate Provinces the state of affairs in which was made to justify this exceptional enactment at the time—has been, so far as I can see, quite tranquil, and the better mind of East Bengal, on the occasions of the conferences which were unfortunately suppressed, gave evidence of a sincere desire to co-operate with the public authorities. As for the other Provinces– they have all been peaceful and quiet all these years, and even when this Act was passed no reference was made to their condition as justifying any such extraordinary legislation, in derogation of popular rights. I submit, therefore, my Lord, that the very special circumstances which might have justified so stringent and drastic a measure having fortunately very largely disappeared, there is no justification now for the Executive to ask the assistance of this Council to sanction the continuance of this 'repressive measure of considerable potency.' As a matter of fact there is ample provision made in the Code of Criminal Procedure, in section 144, for the suppression of mischievous or seditious public meetings, and it was while purporting to act under the terms of this section that the authorities at Barisal dispersed the session of, in my opinion, an innocent gathering, *viz.*, the Bengal Provincial Conference, in March 1907, months before the present Act was passed. I venture to say, therefore, that in section 144 of the Criminal Procedure Code, the executive authorities have vested in them ample powers for meeting all cases where public assemblies are likely to resort to mischievous or inflammatory propaganda.

"It is alleged in the Statement of Objects and Reasons of the present Bill that the Act 'where put into actual operation has been effective in stopping several meetings which, it was feared, if held, would have given rise to disturbances; and even where it has not been enforced its moral effect as a preventive measure has been invaluable.' Now, as to the first part of the allegation, I confess it is a mystery to me as to how it could have been known that meetings, which never were allowed to be held, could have resulted in disturbances. Possibly the alleged fact was ascertained through some occult process, unknown to the non-official Members and familiar only to our omniscient official colleagues. But in regard to the second part of the allegation, namely that the Act, even where it has not been enforced, has had 'invaluable moral effect' as a preventive measure, I think it my duty to inform the Council that in the Provinces of Behar and Agra and Oudh—with which I may claim to be in intimate touch—the only effect of the Act has been that of demoralising public life and practically paralysing all healthy and legitimate public activities. Its existence on the Statute-book and its subsequent extension in January last to all the Provinces which were till then exempt from its operation, has materially and seriously affected constitutional public work needing joint effect and co-operation, and, as such, it has been fruitful in engendering in the public mind a feeling of deep dissatisfaction amongst those who, during the recent period of storm and stress, tension and excitement, have been unswerving friends of law and order. That after the sincerely loyal support we have given to the Government in Behar and the United Provinces, and thus strengthened their hands in combating undesirable and unhealthy unrest in some other parts of the country, we should find ourselves so distrusted as to be placed under the veritable sword of Damocles, in the shape of this rankly repressive legislation, has caused us, I beg to assure Your Lordship, the deepest humiliation as casting an unmerited stigma on our loyalty and on our unswerving adherence to peaceful, constitutional public work. What I have said above of the character of public work in Behar and the United Provinces will, I have no doubt, be endorsed by the Hon'ble Mr. Earle—who was our Commissioner at Patna till recently—and by the Hon'ble Mr. Meston, who, though he left the United Provinces of Agra and Oudh some years back, is nevertheless in close touch with the affairs of his old Province. If it be said, however, that it is impossible to make exceptions in a measure meant to affect the whole country,

I submit that in matters of such legislation as the one before us to-day, it seems to me a wrong principle to proceed on the lines we are asked to do. It was pointed out by that great and distinguished jurist, Sir Henry Maine, that the true principle of Indian legislation should be to enact measures for particular tracts and Provinces and then to extend their operation to other parts of the country, in the light of the experience gained of their actual working in the smaller area. Whether this principle be feasible or not in other departments of legislation, I venture to say that it is a most desirable course to follow in the matter of enacting repressive measures. Almost all our Provinces are now supplied with the requisite machinery for legislation, in the shape of Provincial Councils, and I confess I cannot understand why it should not have been left open to the Provincial Governments to enact in their Councils such measures of exceptional legislation as may be required by the special exigencies and requirements of their territorial jurisdiction, in place of having an all-India measure like the one before us, which in its broad sweep grinds all— the guilty few and the innocent many.

"In conclusion, my Lord, I desire to express my view that in coming before the Legislature for assistance in enacting this measure, it was not right, it seems to me, for the Executive to rely only 'on the unanimous advice of Local Governments.' Far be it from me to say one word in derogation of the value or importance of the opinions of our Local Governments, but nevertheless the fact remains that to accept the views of the Local Governments only and to act upon them is to proceed upon purely *ex parte* lines. Surely, my Lord, there are other people to be considered, other interests to be taken into account—the interests, views and opinions of the great educated Indian community—great not necessarily in numbers but in their influence and importance—whose healthy public activities are seriously menaced and jeopardised by this measure. I fear I cannot honestly say that the Government have considered the question—as they should have done—from *our* standpoint, the standpoint of the people. If they had done so, I am sure they would not have felt so 'convinced,' as they are alleged to be in the Statement of Objects and Reasons, as to the continuance of the Act. That the Local Governments should have recommended the continuance of a measure which offers them the shortest cut to the accomplishment of what they desire is what we can all understand, but that the Government of India should have failed to weigh the *pros* and *cons* of the question, from the popular standpoint, is something which I cannot but sincerely regret. I fear that the continuance of this Act will act as an irritant instead of an emollient, and that it is likely to engender discontent where it does not at present exist, and I cannot, therefore, see my way to give my support to the proposal before the Council."

The Hon'ble BABU BHUPENDRA NATH BASU :—"My Lord, I must say that I rise to speak in this Council with a feeling of considerable diffidence. My Lord, I do not conceal from myself that I exhibit in my person all the defects of the race from which I come. I am a Bengali of Bengalis, and I have taken a very prominent and active part in opposing that measure which Bengal has taken so deeply to heart. Therefore, my Lord, in addressing this assembly I have to combat some amount of prejudice at least against me personally. But laying aside those personal considerations which I appeal to this Council to do, they may for the moment forget and treat me not as a Bengali but as the advocate of the cause which I am trying to place before this Council on this occasion, I shall venture to place my views on the proposed legislation of to-day. My Lord, having regard to the statement made by the Hon'ble Mr. Jenkins that this Bill is intended for a period of five months only, and that the question as regards its renewal is as yet undecided, I probably should have seen my way not to enter into a detailed examination of the merits of the measure before us. But, my Lord, I feel a sort of strong pre-sentiment which I cannot, I honestly say, resist, that what is sought to be continued to-day may soon be made permanent. If, my Lord, with Your Lordship's

experience of five years' administration in India we have been unable to give the quietus to this measure of 1907, it is hardly to be expected that a Viceroy who will be new to the conditions of India with an Executive Council which also has been recently recruited will be able to withstand the pressure of the Local Governments and to resist this measure being put permanently on the Statute-book. My Lord, a question has been asked in this Council as well as outside: do the circumstances of to-day resemble those which led to the introduction of this measure in 1907? That is a question to which a frank, a decisive, a clear and an exhaustive answer was expected. If it is the fact, my Lord, that there is no intention of renewing this Act after five months are over, then probably no answer was needed; but having regard to the absence of a declaration to that effect, I should have expected—the public in India expected—that there should have been an exhaustive statement of the grounds which led the Government to continue or to renew this measure. My Lord, it is never pleasant to go back to the history of old times in connection with repressive legislation. My Lord, if it were open to me, if I thought it was necessary, I could place before this Council facts and circumstances which were deemed sufficient by Government to justify the passing of the Act in 1907—facts and circumstances which if properly stated, would put a very different complexion upon the responsibility of the parties concerned in the passing of that measure. But, my Lord, since I came to this meeting I have decided not to rake up old memories. I shall assume for the purposes of my argument—it is not necessary to go further—I shall assume for the purposes of my argument that a state of things did exist, whoever may have been responsible, in 1907 which justified the passing of this measure. I shall fully place myself, if it is possible for a humble citizen to do so, in the position of the Executive Government in 1907. We feel, all the members of the public appreciate, the difficulties, and, my Lord, we also appreciated the studied moderation of the speeches which Sir Harvey Adamson made on that occasion in this assembly. My Lord, as I have said, I shall assume that conditions existed which necessitated the passing of this measure in 1907.

"My Lord, does not the question strike one that before reproducing or continuing this measure there should be an inquiry as to whether the circumstances of to-day are similar to the circumstances of 1907? That is a most necessary inquiry in this matter. My friend, the Hon'ble Mr. Madge, has been pleased to give *carte blanche* to Government in passing any criminal law which it likes if it thinks it is for the benefit of the community which it governs. I do not dissent from that proposition, but I shall show later on what is the objection of the people to the Government passing a measure of criminal law, in which it places itself in the position of a judge of its own action. I do not think my friend, the Hon'ble Mr. Madge, will for a moment defend the Lynch Law of America, where an infuriated populace seeks speedy justice against an offender and where no form of trial is gone through or allowed to be gone through. Nor do I think, if he had carefully considered that prospect, he would lay down the proposition that the Government is at liberty to pass any measure such as that before us to-day, and to constitute itself sole judge in carrying that measure through in practice."

The Hon'ble MR. MADGE:—"I did not say so, my Lord."

The Hon'ble BABU BHUPENDRA NATH BASU:—"That is the effect of the legislation which we are considering to-day, and that, my Lord, is our chief ground for opposition to the measure.

"My Lord, since 1907 the atmosphere has been considerably cleared. We hope and trust that the murderous conspiracies which had blackened the good name of our country, which had made us hang down our heads in shame and humiliation, have been hunted down and thoroughly extirpated. My Lord, the whole moral sense of the community has been roused against the perpetrators of crimes like these. There

unhappily—I say so with shame and sorrow—has arisen in Bengal a new class of crimes. We have seen recently young men and boys of respectable families taking to dacoities which are considered in many instances to be political. My Lord, nothing more cowardly can be conceived than the making of raids upon defenceless homes, than the torturing of innocent women and children and aged householders in order to make them divulge their hoards, their ornaments and their jewellery.

"My Lord, I belong to the middle classes of Bengal, classes which have been honourably known from time immemorial for their strict adherence to the principles of morality and religion; and I say, my Lord, that I have no words to express how deeply I feel the sense of shame and sorrow for the conduct of these young men. If it were possible to lay bare my heart strings to this assembly, they would see upon them the impress of the deepest humiliation. But, though I frankly confess that these crimes, which have tarnished the fair fame of the province from which I come, must be suppressed, I respectfully venture to join issue with Your Lordship's Government as to whether the means that you are adopting to-day is the best means, or in any way a desirable means, by which this form of crime can be suppressed. My Lord, does anybody really think that crimes like these or crimes which were unhappily the result of the insane band of conspirators who assembled at Manicktolla, are perpetrated on house-tops or in the bazaars of India for the people to see and hear? Would the suppression of public meetings in any way conduce to the suppression of this class of crimes? I do not think, my Lord, that this Act would have that effect. Then, my Lord, when introducing this measure into the Supreme Council, Sir Harvey Adamson was placed to complain of the want of co-operation with the police of the loyal and law-abiding portion of the Indian community. My Lord, people in India often wonder how our rulers spending a lifetime in India manage to remain so ignorant of the real state of affairs in the country and the people they are sent out to govern. I am afraid that this feeling of wonder is not wholly justified. From the very nature of things those who come out here to govern, though they live in India, mostly live a life apart from the Indian. My Lord, if Sir Harvey Adamson had ever occasion to be cited as a witness in a criminal case—to dance attendance on the inquiring or trying Magistrate from day to day and from place to place, to enter into recognizance bonds for due appearance to be harassed by the police if his statements did not bear out their theory, to be sometimes browbeaten by the Magistrate who was imperfectly acquainted with his language and seldom aware of his position in life, to neglect his field if he was an agriculturist, to neglect his work if he was a labourer, to neglect his business if he was a professional man, and not to be paid anything for all this trouble, for all this annoyance, then I am sure he would not have made the observation that he made on that occasion. No one rejoices more than his many friends in Bengal at the well-deserved promotion which has been bestowed upon Sir Harvey Adamson; but I may take the liberty to say that if it were possible for Sir Harvey Adamson as a private citizen in Burma to start a criminal case—to institute a case when he next loses a coat or a ring—and after he has done so I would ask him his opinion about co-operation with the police. But, my Lord, apart from this, before we have recourse to a repressive measure described by Sir Harvey Adamson as one of 'considerable potency,' is it not fair to us, the Indian communities, to consider whether the existing law is sufficient or not for the purnose for which is sought to be attained by this legislation? My Lord, there are two stages in dealing with crime: first of all the preventive stage, and then the punitive stage. Let us see, my Lord, what are the powers that the Executive possesses under the preventive provisions of the ordinary criminal law. I shall not go into details which can only interest a lawyer, but I shall take the broader features of the case. There are provisions in the criminal law by which a Magistrate may bind down any obnoxious person to keep the peace or be of good behaviour. My Lord,

recently, while considering the provisions of the Press Act, my Hon'ble friend, the Law Member, with his usual ability, pointed out that those provisions were of no avail; that the writer of a seditious pamphlet might be bound down to keep the peace and be of good behaviour, but at the very next moment he would set up some other person through whom he would spread his poison. That may be or may not be so; but, my Lord, in the case of seditious speeches I do not think my learned friend would suggest that it is possible for a seditious speaker to speak through a dummy. My Lord, all the effect of the speech depends upon the personality of the man; it is his voice, it is his magnetism, which move audiences, and *benami* speeches will have no effect in spreading sedition or poison. Then, my Lord, my friend was pleased to say that, in undertaking cases for prosecution, Government had to allow a large margin. I may point out to my friend that these are safeguards which the law and the wisdom of ages have provided for the safety of the citizen. The laws provide that in matters of sedition, where the action of Government is challenged, Government should not act in a hurry. My Lord, I do not wish to labour that point, but I have said, and I wish to repeat it with some degree of assurance, that the preventive powers given to Magistrates under the present law are sufficient. Added to those which I have already placed before this Council are the powers which have been referred to by some previous speakers of stopping meetings under section 144 of the Criminal Procedure Code. Everybody knows here that those provisions—the provisions of section 144—have been liberally exercised in the past, sometimes, also, punctuated by regulation *lathis* as in Barisal. My Lord, meetings have been stopped which were considered by only those who were not in touch with the public to contain in them elements of disorder and sedition. I may instance as an example that the great commemoration meeting which was intended to be held in Calcutta on the Partition Day in 1908 was stopped under this very section on the eve of its being held. The orders issued at about 4 o'clock, when nearly 50,000 men had assembled to hold the meeting, and after the orders were promulgated all this vast crowd quietly dispersed. So also meetings in various other places in Bengal and East Bengal have been stopped under section 144. What more then is wanted?

"I have dealt with the preventive provisions of the Act of the ordinary criminal law as it now stands. I will now proceed, my Lord, to another branch of my argument —the punitive provisions. I do not think that the most reactionary member of any Government in India would for a moment deny that the punitive provisions which the Penal Code lays down are sufficiently hard. My Lord, the lot of the political offender in India is different from that of a political offender probably in any other civilised country. He is treated as an ordinary felon; he is set to do hard work which to him, unaccustomed as he is to this work, is much harder than the work allotted to the ordinary criminal drawn from the criminal classes of India. He is sometimes flogged, and it has not been unknown that he has been dragged in chains through crowded streets. I suppose, my Lord, that this mode of punishment is resorted to to humiliate the man in public esteem. My Lord, from Your Lordship's place in Council may I appeal to those who inflict punishments like these to consider as to whether heavy punishments do not sometimes, do not ofttimes, make men overlook the heinousness of the offence and rouse the sympathy of the populace towards the unhappy offenders. And if, my Lord, it is not a profanation in this assembly to refer to the incident, they should not forget that One, whom the larger part of the civilised world adores to-day, was made to carry His own cross through the streets of Jerusalem.

"My Lord, I have ventured to labour the point that the preventive and the punitive provisions of the law are quite sufficient; to ordinary men they would appear to be more than sufficient. Why then have recourse to exceptional and dangerous legislations? That the legislation is exceptional has been admitted by the Government itself;

that it is dangerous will probably also be admitted. I take the opportunity of quoting from one of the recognised writers in England on subjects dealing with the political administration of the country. I shall not quote from German or French or Italian authors, but I will quote from an Englishman of undisputed authority. Mr. Sidgwick says:—

'It is an important practical security for freedom of political utterance that man shall not be prevented from writing and publishing what he likes by any interference before the act, of an executive official—but only restrained by the dread of punishment. It is indeed indispensable to maintain this security if we are to get the advantage of free criticism of the acts of the executive; since the question, whether such criticism has kept within the legal limits laid down for it, is too delicate a one to be left to the judgment of the persons criticised.'

"My lord, if a provision like this—if a law like this—is considered dangerous in European countries, where at least they have a homogeneous Government, it is much more dangerous under the system of Government under which we live. My Lord, we have our ruling class mostly recruited from outside and for a considerable time necessarily ignorant of the feelings, the sentiments, the habits, the usages and the customs of the people they are called upon to govern. In the meantime they have got to gather their knowledge from sources available to them. I will not repeat the commonplace of sitting on the safety valve. The Government of India is too firmly established to care that 'sedition should be driven underground.' My Lord, that may be so, but is it too much to say that the heart-beat of the nation can only be audible to Government through the mouth of its public speakers? And is it proper, is it necessary, that this channel of information should be closed? My Lord, that I am not speaking as a mere theorist, that I am not speaking as a mere idealist, as a mere sentimentalist, as one who is bound to oppose the Government in season and out of season, I say, my Lord, for the delectation of my friend, the Hon'ble Malik Umar Hyat Tiwana, that on many occasions I have manfully supported the Government notwithstanding the severe disapprobation of my own countrymen where I have felt it right to do so. I say so not as a mere theorist. I appeal to the experience of Hon'ble Members here as to what has been the effect of the recent legislation regarding the Press and the platform in Bengal. Notwithstanding the high authority of Sir Edward Baker, I may be permitted to speak with some degree of knowledge. In Bengal public meetings have ceased to be and the voice of the people has ceased to be heard, due to the fact that no body of men professing to represent the voice of the people would care to hold a public meeting with the sanction of the District Magistrate, with the names of the speakers approved, with the language of the resolutions to be passed settled, with the lines of the speeches to be made laid down. And do you think that if any body could be found to hold such a meeting many people would care to attend it? And would such a meeting be helpful to Government? Would it be any index of the public sentiments in the country, or would it be merely a repetition of what the District Magistrate wants to be said? My Lord, let us take the case of newspapers. I am not a pressman myself, and members of Council need not fear me as such; but I have been in close touch with many pressmen in my part of the country. I find, my Lord, that effective criticism of Government and of public meaures has been stopped since the recent legislation; and papers, which were keen critics of public events, are now given to discussing affairs in Timbuctoo and in Kamtschatka, or discussing, the agricultural conditions in Brazil or Mexico. That certainly is not a desirable state of things. My Lord, what is it that is wanted? Does the Executive—does Mr. Jenkins—want that we shall have a silent India, an India, so to say, in a deep swoon, an India where you do not feel the heart-beat, an India in which you do not feel the throbbing of the pulse, an India buried in some subterranean vault and seen only through the coloured slides of the Criminal

Investigation Department? Is it wanted, my Lord, that the Government should live in some pleasance, secluded from public opinion and public view like Prince Siddharta, from whom it was sought to exclude a knowledge of the world until he became the Buddha? Or is it, my Lord, that the Government wants to be in touch with the people it governs through the Press and the platform which are the only channels open to them?

"My Lord, I have spoken with some degree of warmth. I belong to the tropics and the effects of the recent legislation have been too potent for me to keep silent. If the suppression of the Press and the platform could bring the millenium to India, I certainly would support it with my friends opposite. But, my Lord, Your Lordship should bear in mind that you cannot overtake the heels of time; you cannot harness the thoughts of men; you should bear in mind that you can no more suppress the surging forces rising around you than did the old English King suppress the swelling billows of the sea.

"My Lord, is it too late to appeal to Your Lordship's Government to follow the right path? Your Lordship has shown what the right path is. Your Lordship has inaugurated reforms which are destined at no distant date to bring about a better understanding between the people and their rulers. You have, my Lord, after the lapse of a century and a half, first made us realise that there is a knocking on the wall with which the bureaucracy has delighted to shut itself round. Why, my Lord, should not Your Lordship go on courageously on the path on which Your Lordship has set the journey? My Lord, why should we not trust to natural remedies; why have recourse to remedies of exceptional potency which may as well kill as cure and which more often kill than cure?

"My Lord, I am coming to the end of my observations. I am speaking, as I frankly confessed, under a deep sense of despair—despair because, my Lord, I feel that whatever I may say the Bill will pass into law, and I feel, my Lord, that at no distant date what is sought to be continued to-day will be made permanent. My Lord, 'coming events cast their shadows before.' But my Lord, I am not absolutely without hope. I feel, I believe, my Lord.

'that good shall fall,
At last—far off—at last to all,
And every winter change to spring.'

"Would it be, my Lord, permissible for me to quote in this assembly the famous passage of St. Paul in his second epistle to the Corinthians; 'We look not at the things which are seen but at the things which are not seen; for the things which are seen are temporal, but the things which are not seen are eternal.' We Hindus, my Lord, cradled in the religion of the Vedanta and Upanishads, we also look at things which are not seen. In the beautiful language of my country, used more than 2,000 years ago, the measure that is sought to be passed to-day is but a ripple on the wave of time, and will pass away. If I were not inspired by that hope and that belief, knowing how weak and ineffectual our voices were, I should not have come a thousand miles and more to record my humble protest. But, my Lord, for the day the defeat may be ours, but—

'The races rise and cluster,
The evils fade and fall,
Till chaos blooms to beauty,
God's purpose crowning all'."

The Hon'ble SIR VITHALDAS THACKERSEY said:—"My Lord, whatever may be the fate of this motion, whether the Government chose to accept the advice that the country may be given an opportunity to prove that no coercive measures are necessary

for the ordinary purposes of Government, or stick to their opinion and continue this Act for five months, I hope the principles enunciated by the Hon'ble Malik Saheb will not receive acceptance. My Lord, our religion has taught us, we have been taught from the very beginning in our own homes, to consider the relation between the Government and the people as between parents and children, and not as enemies. The principles may be quite acceptable in Turkey or in Persia, but I am sure that they cannot be accepted by the most conservative of the conservatives in the British Government. Now with regard to this Bill, I may say that if I were satisfied that it is necessary for the preservation of law and order, I would be the first to support it.

"When the original Bill was before the Council in 1907 the Home Member then in charge of the Bill said: 'We were unwilling to legislate until we had seen whether the Council reforms that were laid before the public would meet any response in allaying seditious agitation.' He further went on to say: 'I beg that this condition may be taken as qualifying every word that I say to-day, namely, that the Bill is designed to operate only in exceptional circumstances, exceptional cases and exceptional times of insecurity.' Now my Lord, is the condition of India such as to justify the continuance of a measure which was, according to the quotation I have read, introduced and passed to meet exceptional circumstances? The reforms, as has been already said here, so wisely and courageously initiated by Your Lordship and carried through with all the courage of a statesman in spite of enormous difficulties, have, I may say, enormously improved the situation in the country. This fact is not denied. Even the Under Secretary of State in the House of Commons declared the other day that the situation had improved and that reformers have been drawn to the side of Govenment owing to these reforms. I submit, my Lord, therefore, that to my mind it is not necessary to continue the operations of this Act any longer. Again, my Lord, in opening the first Council under the new Reform Scheme in January last, Your Lordship feelingly declared—'No one has longed more earnestly than I have to allow bygones to be bygones, and to commence a new administrative era with a clean slate.' My Lord, I appeal to Your Lordship that it would be quite in keeping with the spirit of that observation to allow the present motion to drop and to give an opportunity to the people to prove that the Act is not necessary. And, after all, my Lord, what risk is incurred by Government in following that course? As has been pointed out, the present Act expires on the 31st of October. In all probability the next session of this Council, will commence about the 10th or 15th of December. There is an interval of only five or six weeks during which this coercive Act shall not be in existence, and this is certainly a very short time, during which an opportunity, as I have suggested, may be given to the people. If after putting confidence in the people, the confidence is abused or misused, it is quite open to Government to come forward and introduce the Bill, which is proposed to be continued from the 31st of October; and in that case I am sure Government will get the support of all reasonable men for the preservation of law and order as they got support at the time of the Press Act. That position will be considerably stronger than the position of Government to-day when it is proposed to carry this Act in spite of opposition. As I have said, the risk is very small indeed. My Lord, the action that I have suggested will give a personal gratification to Your Lordship that you will leave this country peaceful and contented. It will also deepen the sense of gratitude in the minds of my countrymen, in whose hearts Your Lordship has secured a permanent place of respect and love, and will also be a crowning finish to Your Excellency's glorious regime which has been so successful in spite of enormous difficulties. Your Lordship may justly take pride in handing over the government of the country to your illustrious successor brighter and more hopeful."

The Hon'ble Mr. MAZHARUL HAQUE said:—"My Lord, I have given my most earnest and anxious consideration to the Bill before the Council, and I have come to

the conclusion, though rather reluctantly, that both in the interests of the Government and the country no fresh lease of life should be given to the Seditious Meetings Act of 1907. With every desire to support the Government in their efforts to weed out sedition and anarchy from the land, I feel that I cannot conscientiously support this measure. There may have been some justification for passing this Act in 1907, when some parts of the country at any rate were in a disturbed state and required rather severe handling, but now the country has quieted down and there is no longer any reason why the Statute-book should be disfigured by retaining a measure which is looked upon by a vast majority of the people with strong feelings of bitterness and resentment. I do not wish to be misunderstood. I believe that the Government of India, when they passed this Act, were actuated by the sole motive of grappling with a situation which had well-nigh become intolerable, and possibly the Act has been instrumental in clearing the atmosphere and relieving the tension to a certain extent. But I also believe that the necessity for its continuance no longer exists, and that it should now be consigned to a well-merited oblivion. The little good that it is supposed to have done hardly compensates for the evils and the soreness of feeling that it has brought in its train. Last February, in Calcutta, while announcing the release of the deportees, Your Lordship was pleased to remark that the agitation which till then had been carried on had degenerated into an anarchical conspiracy and that there was no longer any necessity for keeping these men in detention. Thenceforward it was the duty of the civil authorities to find out the criminals and bring them to justice. How truly had Your Excellency gauged the situation then, and has Your Excellency ever regretted the step taken at that time? Is it not a fact that the peaceful condition of the country for the past six months has conclusively proved that those wiseacres who mournfully shook their heads at this graceful act of clemency and conciliation were false prophets and that Your Excellency was entirely in the right? Why not follow a similar policy as regards the present measure? I do not believe that the people of India are so degenerate and lost to all sense of gratitude that they would not appreciate and respond to a great kindness such as this. My opposition to this measure is also based on the principle that if the ordinary laws of the land be sufficient to cope with a certain class of crimes, it is highly impolitic to enact special laws. These only magnify and bring into prominence offences which should never be given any undue and mischievous publicity. Trials under special Acts attract the attention of the public to the personality of the offenders, who are at once raised to the position of martyrs to the cause, while if they were tried under the common procedure by the ordinary Courts of Law they would be treated as ordinary offenders, and what is more to the point they would get their proper deserts. At any rate there would not be any very great sensation about these trials. What I object to is the unnecessary and objectionable advertisement that a certain class of offenders receive by trials under special laws. In my humble opinion, the provisions of the present Code of Criminal Procedure are more than sufficient to prevent and suppress any meeting which had the propagation of sedition as its object. I am speaking in the presence of some eminent lawyers and especially of the towering personality of my learned friend the Hon'ble Mr. Sinha—the pride of all India—and of course, my Lord, I speak with great diffidence. But I may confidently say that all lawyers will agree with me that Chapters IX and XI of the Code of Criminal Procedure abundantly provide for the cases contemplated by the Seditious Meetings Act. As a matter of fact, there have been cases in which these provisions were enforced and successfully too. If my reading of the law is correct, then the question arises, why not utilize the common law of the land and thereby give a quietus to this perpetual agitation against repressive measures? The present Bill has the virtue of shutting the mouth of a few—a very few—of the seditionists, but has, at the same time, the fault of muzzling the vast majority of the loyal subjects of the Crown. Why punish the innocent many for the sins of the guilty few? Is that noble principle of British justice that it is better that

ten guilty men should escape than that one innocent man should suffer to be reversed in this instance? A few youthful lunatics have taken it into their head to subvert the peace of the country by committing murders and outrages, and the whole country has to pay the penalty. Take the case of my own Province of Behar. I am alluding to my own Province by way of illustration. Otherwise the argument holds good for most parts of India. Behar is, as it has always been, free—singularly free—from the taint of these revolting crimes. Ask the Hon'ble Mr. Earle, who was so long in Behar that we Beharees consider him as one of ourselves, whether the soil of Behar is congenial for the propagation of the seeds of treason and sedition. Ask the Hon'ble Mr. Carlyle, another European Beharee in this Council, whether I am wrong in my description of Behar. If we Beharees have not offended and are not likely to offend against the law, then why should we be made to suffer along with the criminals of some other parts of the country? It is no use telling us that so long as we do not play with sedition we need not fear anything. The law is there and we are living under a sense of insecurity. Any day a foolish act on the part of a misguided youth may bring the whole Province into the clutches of the law. My Lord, it is neither sound statesmanship nor good policy to alienate the feelings of a warm-hearted and generous but sensitive people by enacting repressive and irritating measures. In the long run it can do no good either to the people or the Government. It has been truly said, where repression fails, conciliation can do wonders. And after all what has been the sum-total of the achievements under the Act which has been now in force for the last three years? Three or four districts only have been proclaimed and perhaps the same number of meetings suppressed. What a ridiculously paltry and insignificant result when compared to the abnormal and unhealthy excitement and irritation which is kept up throughout the country by the continuance of this obnoxious law. The ostensible object of enacting this law is to suppress agitation, but it defeats its own object by keeping that agitation alive, and very much alive.

"My Lord, I also strongly oppose this Bill on the ground that it effectually prevents the co-operation of the people with the Government. I am one of those who believe that the salvation of India lies sincere and honest co-operation between the Government and the people and also between the different communities and races of India. The recent alarming and mischievous growth of numerous sectional and sectarian movements cannot but retard the progress of the country and must make the task of governing it a very difficult one. If the Hindus and Mussalmans quarrel among themselves, then there is no hope for India. If the officials and non-officials look askance at each other, then the cause of our country is lost. Let us have done with this policy of suspicion and distrust. Let us have toleration and sympathy for each other's views. Then and then alone we can hope, in the fulness of time, to place India in its proper place among the civilised nations of the world.

"My Lord, this law has killed the public life of my country by taking away the right of public speaking—one of the most cherished privileges granted to us by the British Government. In place of meetings for the discusssion of problems affecting the vital interests of India, we have now meetings for collecting subscriptions and voting addressess of welcome to the officials. This is a consummation which even the framers of the law could hardly contemplate with any decree of satisfaction.

"My Lord, India has just stepped into the field of modern civilisation. She is a young but a growing nation, with aspirations and ideals of her own. For her children it is an up-hill work to reach the summit. Mistakes are liable to be committed at the commencement of their career. It is the noble task of British statesmanship to correct these mistakes and to guide the activities of the people into proper channels. The difficulties are many and numerous, but surely tact and sympathy can surmount them. Of course, it is much easier to destroy than to build. The aspirations of a young

nation can be nipped in the bud and the public life of a country like India be given a blow such as this Act contemplates which would kill it without any hope of resurrection. All this is extremely easy. But such a catastrophe could hardly redound to the credit and glory of England, in whose hands an all-wise and merciful Providence has put the destinies of India. I for my own part have an undying faith in the statesmanship of the British people and refuse to take any pessimistic view of the situation.

"Your Lordship has inaugurated a new era in this country—an era of conciliation and goodwill. The signs of a mighty change are already visible in the distant horizon, and if my countrymen would only keep to the path opened out for them by Your Excellency, their future is assured. My only regret is that the last act of Your Excellency's Government has been of a repressive nature. It could have been of a different description, but the fates had decreed otherwise."

The Hon'ble KHAN ZULFIKAR ALI KHAN said :—"My Lord, I think the proper time to pronounce a definite opinion about the Prevention of Seditious Meetings Act will be in March next, when its fate will be finally determined. At present it is proposed to let it live for five months more than its allotted period ; but a brief review of the paramount necessity which compelled the Legislature to resort to extraordinary measures in order to cope with a novel and alarming situation would not, I believe, be inappropriate. My Lord, we all remember so well the time when sedition in India made its first unwelcome appearance. It was then supposed to be a negligible quantity and no serious attention was paid to its mischievous activity while it rapidly assumed alarming proportions. Platform speakers lost no time in promoting insurrectionary spirit of disorder and hostility to the English Government. Riots and disturbances of very serious nature imperilled peace all over India and the forbearance of the authorities was construed into weakness.

"It soon became manifest that an organised system of assassination and widespread network of intimidation received their sustenance from the subtle intellects of speakers who did not shrink from any falsehood which was industriously propagated concerning the intentions of Government. Young men committed outrages of a most atrocious character which caused desolation and misery in many a happy home, and there can be no doubt that these crimes were the simple translation into fact of the strange theories which had been so complacently propounded in public meetings.

"My Lord, it was openly preached and dinned into the willing ears of callow students that the Government established by law in India was a relic of a hateful history and a symbol of an unjust domination.

"These and many other theories had the most disastrous effect on the morale of the people. But at last the exigencies of public justice and the claims of humanity awakened the Government to the sense of its responsibility ; and the Prevention of Seditious Meetings Act was at once produced from the armoury of the Legislative Department.

"The effect was very salutary—the atmosphere which was surcharged with anarchical ideas was partially cleared of its impurities, and no better proof of its efficacy and indisputable necessity could be imagined than the comparative security of life and property which has resulted from its operations ; still every now and then we are reminded of the contrast between the reality and semblance of things, and we cannot by any means conclude that the political barometer in India yet points to set fair. India is traversing a period of untimely and painful transition and a single false step at a juncture like this may produce grave political crises ; and I would say that, in the interests of this country, it would be very unwise to let loose those tongues which almost succeeded in subverting the reign of law and order which happily prevails in India.

"My Lord, experience has shown that those of my countrymen who use all legitimate and peaceful means of demanding rights have nothing to fear from the application of the Prevention of Seditious Meetings Act and it hits only those who have evil intentions. My Lord, to my mind the Press Act and the Prevention of Seditious Meetings Act are virtually interdependent and the one without the other will be a perfectly futile measure. I would therefore suggest that this should run concurrently.

"In concluding these remaks I feel confident that all law-abiding people will be always only too happy to support the Government in the proper discharge of its primary duties to maintain law and order, vouchsafe justice and fair play, and uphold the sanctity of life and property in India."

The Hon'ble MR. N. SUBBA RAO said:—"My Lord, I hoped that, if Your Excellency's Government wished to take power to continue the Act for some time longer, it might arrange to go down to Calcutta, say, a fortnight earlier than usual and submit the Bill for the consideration of the full Council in accordance with the established practice and the intentions of the Secretary of State in the transaction of important legislative business. Further, by October next it would have become clear to the Government, if it has not already become so, that there would be no necessity for continuing this 'repressive measure of considerable potency,' to quote the words of the Hon'ble Sir Harvey Adamson. Or, if Your Excellency's Government did not wish to put itself to this inconvenience, it might have allowed the Act to expire in the ordinary course of things, and leave it to Your Lordship's successor's Government to determine whether the then situation would demand the re-enactment of this exceptional legislation. This course would have the advantage of testing whether 'during the interregnum,' when the Act ceases to be in force, the so-called 'moral effect' of this measure would in any way be lessened.

"But vain are these hopes, my Lord, when we consider the peculiar conditions in which the Government is placed. It has become evident that the Government feels that it cannot get on without this Act on the Statute book and it does not feel comfortable if this measure is held in abeyance even for a month or two.

"I have felt compelled, therefore, my Lord, to attend this meeting, though at short notice and with much personal inconvenience, to enter my humble protest against the view that the Government has unfortunately taken of the political situation of the country and submit that the circumstances of the country do not call for this legislation at this juncture. The more so, my Lord, as I did not wish to leave any room for the responsible members of the Government to draw the presumption, as the Hon'ble Sir Harvey Adamson erroneously did when this Act was passed in 1907, that 'the Hon'ble Members who are not present either approve of the Bill or at least do not so strongly disapprove of it as to consider their presence necessary'.

"I am sorry, my Lord, that the course which the Government has chosen to adopt is likely to mislead the public in England and lend colour to the wrong impression that this country is so dangerously insecure that this exceptional legislation should be continued. My Lord, I must confess that I am obtuse enough not to see the necessity for this Bill. Since the Act was passed in November 1907, it was extended immediately on the 1st November to the Province of Eastern Bengal, where it was enforced on the 7th idem in the district of Bakarganj and latterly on the 14th March last in the districts of Bakarganj, Faridpur and Mymensing. I understand that the only use made of the Act in those districts was to prohibit the holding of District Conferences which might equally have been done under the Criminal Procedure Code. On the 13th of January last the Government was pleased to extend the Act under one and the same notification to all the other Provinces—Madras, Bombay, Bengal, the Punjab, the United Provinces and the Central Provinces. What is the reason for this wholesale

extension of the Act? None is assigned in the notification. I should like to be enlightened by the Hon'ble Member in charge of the Bill as to the special circumstances in these several Provinces that necessitated the extension of the Act. If, as suggested, the object of the Legislature were to produce an 'invaluable moral effect' as a preventive measure in these Provinces, though there might be no occasion to enforce its provisions therein, it would not have invested the Governor-General in Council with discretionary power to extend the Act from time to time to different Provinces. In justifying the extraordinary powers conferred by the Bill, the Hon'ble Sir Harvey Adamson assured the Council 'that the Bill is designed to operate only in exceptional circumstances, exceptional places and exceptional times of insecurity.' 'As to the range of the operation of the Bill, the Government of India have retained it entirely in their own hands, and I can assure the Hon'ble Members that the whole circumstances will be well weighed before the Bill is extended to any Province. Your Lordship in bringing the proceedings to a close observed 'it seems to have been generally assumed that, because it is applicable to the whole of India, it is to be universally enforced. That has never been the intention of the Government of India. Thus it is clear that the intention of the Act is that each Province has to be judged on its own merits and the discretionary power has to be exercised with reference to the circumstances of each Province. I regret, therefore, that the discretion given to the Executive by the Legislature was not properly exercised for the benefit of the subject. Take the case of the Province of Madras. There were two cases of disturbance before the Act was passed. One was the defiance of authority on the part of the students of the Rajahmundry Government Arts College in April 1907, in connection with the wearing of the 'Vande Mataram medal. It was a freak of the moment repented amply at leisure. This was the only disturbance at Rajahmundry, and it was due to the advent of Babu Bepin Chandra Pal from Bengal, the exponent of the cult of *swaraj*, who is now in England. The other was the smashing of the European Club at Cocanada by some among the lower orders of the people in May 1907, the immediate cause of which was the severe thrashing given to a boy by Dr. Kemp, the District Surgeon, for shouting 'Vande Mataram.' The leading townsmen of Cocanada immediately held a public meeting deploring the occurrence and strongly condemning the conduct of these people. These two cases were before the Act. After the Act was passed, there was a riot at Tinnevelly in March 1908, when the municipal office was attacked by the mob. The District Magistrate had to give orders to fire and punitive police was quartered on the town. Yet it was not found necessary to put the Act into force in that district. What then was the necessity to extend the Act to Madras in January last? The Province was absolutely quiet and no sense of insecurity was felt anywhere. I believe that what is true of Madras might with equal reason be said of the other Provinces. I shall leave that matter to be dealt with by my Hon'ble colleagues who have more intimate acquaintance with those Provinces.

"My Lord, I shall now refer to the general political situation of the country. If there is one thing more than another which is striking with regard to the present situation of the country, it is the returning faith of the people in the beneficent intentions of the Government and their recognition of its earnest desire to meet their just aspirations and enlist their co-operation by giving them a larger share in the administration of the country consistent with their self-respect and capacity. There is no doubt that during the last few years an anti-British propaganda aiming at absolute *swaraj* was preached by a few visionaries, driven to despair, among other causes, by the seeming failure of the methods of constitutional agitation. The impressionable and unbalanced minds of some young men were unhinged by this new doctrine of *swaraj*, and their misguided vision was dazed by the prospect of a short cut to independence. But soon they have come to learn from bitter experience that

in adopting western anarchical methods they have been playing with fire and wrecking their own lives, with no good to any one. We can safely say that this wave of artificial discontent has well nigh passed away and spent its force, I hope, no more to return and retard the peaceful evolution of this ancient land. But one lesson is writ large on the face of the country, and that is, that there is no other royal road to progress, in whatever direction it may be, whether social, religious or political, than the path of constitutional advance, though slow and arduous. The gospel of revolt for attaining freedom, though new on the political arena, is not new to India. It has been continually preached these several years from religious and social reform platforms with the sympathy and encouragement of Europeans also, and the Hindu society, disorganised as it is, has in its own way been pointing to the path of constitutional reform for its future evolution, and defending itself against attacks inspired by a spirit of 'random rebellion' by having nothing to do with those who revolt against its ideals, traditions and usages. So far, my Lord, the air has been cleared of misapprehensions in ideals and methods of work.

"I submit, therefore, my Lord, that, as testified to by the Under Secretary of State for India at the recent discussion of the Indian Budget, there has certainly been a revulsion of feeling in favour of the British Raj. The improvement in the situation is entirely due to the courageous steps taken by Your Lordship in the direction of reforming the administration of the country and to the abhorrence of the people to the anarchical methods adopted in some places. I submit that true statesmanship requires at this juncture that this tide of feeling in favour of the Government should be fully taken advantage of and nothing done to rouse the suspicions and resentment of the people and retard the good work that is in progress.

"Your Lordship has well observed that the success of the future development of the country must be based 'upon the united efforts and co-operation of British and Indian administrators' and that 'the fellow service of British and Indian administrators under a supreme British Government is the key to the future political happiness of this country.' We appeal to the Government to steadily persevere towards this noble goal for which, I may take the liberty to say, Your Lordship has worked so hard. I have no doubt that when the Indian is accorded a status of equality with his British administrator and feels that he is a real unit in the administration of the country, he will realise that the Government is as much his as that of his British fellow-subject. We can then hope to see the fruition of the united efforts and co-operation of British and Indian administrators in the future development of the country.

"But, my Lord, I feel bound to mention in this connection that there is a serious obstacle in the way, and that is the persistence with which anti-Indian propaganda is preached by a certain section of the Anglo-Indian Press which finds favour with a certain class of Europeans in this country and abroad. I submit that so long as this attitude of hostility and contempt towards the legitimate aspirations of Indians continues, so long will the beneficent effects of reform undertaken by the Government from time to time be delayed and the efforts of the Government to draw the people to its side and inspire them with confidence in its good intentions and acts be frustrated. This attitude of hostility is an important factor which has contributed to the present situation and which has to be seriously reckoned within the future development of the country. Action and reaction are equal, and unless this attitude of hostility is replaced by one of good will and sympathy, the approachment between the people and the Government will be seriously interfered with. My Lord, measures directed to bring about the happy results contemplated by Your Lordship are at present needed, but not this 'repressive measure of considerable potency.'

"I am told, my Lord, that there is still a revolutionary party in some parts of the country and there are also conspiracies of young men hatched in secret and finding vent

in murders and dacoities. It is hardly necessary to say that this Act does not pretend to touch them and cannot hope to suppress them as it deals only with public meetings convened openly in broad daylight. But the Government has taken full powers to deal with secret societies and is strong enough to wipe them out.

"It is said, my Lord, that Local Governments want these powers to be held, in reserve. Power is sweet, no doubt, and every Government, where the people have no voice, would like to have not only these powers but powers much more drastic. The question is whether each province is so insecure that the Provincial Government should be armed with such powers. I submit that, as suggested by the Hon'ble Mr. Gokhale, each Provincial Government should be asked to take power through its Legislative Council, where local conditions could be well considered and local knowledge brought to bear on the subject, and it should not take shelter under the discretionary power of the Government of India.

"In this connection I am tempted to draw the attention of the Council to the present condition of Ireland and the recent debate in the House of Lords on the subject. My Lord, I may submit that the present condition of this country is nothing so dangerous as the condition in certain parts of Ireland, where boycotting, cattle-driving and shooting are carried to a degree which is described as 'scandalous and intolerable' by Lord Lansdowne. It was pointed out that the number of shooting outrages had increased from 60 in 1906 to 520 in 1909. Unionist peers urged on the Liberal Government the paramount necessity for putting the Crimes Act in operation. The answer to this is noteworthy. 'Coercion is no cure. Remove the cause of discontent and you remove the trouble in Ireland.' The Earl of Crewe pointed out that it had not been proved that the application of the Act had ever put down crime. Thus the Liberal Government steadily refused to listen to the counsels of repression so freely offered, and I hope Your Excellency's Government would equally refuse to be moved by alarmists who cannot gauge correctly the present situation and who would welcome any drastic measure because they themselves would not be affected by it.

"I should have been happy, my Lord, if I could have seen my way to support this legislation. But, my Lord, we feel that this Act has a deadening effect on the legitimate activities of the people. We feel the demoralising tendency of this exceptional legislation which would do more harm than good to the country. We feel that it is an undeserved slur on the loyalty of the people. We feel that the ordinary law is sufficient to meet the exigencies of the situation. We feel that the present improved political situation of the country does not call for this repressive measure. For reasons such as these, my Lord, I feel bound to oppose the Bill."

The Hon'ble PANDIT MADAN MOHAN MALAVIYA said:—"My Lord, the measure before the Council is of exceptional importance, and perhaps it is due both to the Government and to the public, a portion of whom at least I claim to represent, to state the reasons why I think it my duty to oppose the motion that the Act for the Prevention of Seditious Meetings should be continued for another five months. My Lord, after the many able and elaborate speeches that have been made against the motion, it will not be necessary for me to take up much of the time of the Council. But I must complain at the outset of the action of the Hon'ble Member who has moved for leave to introduce the Bill in having thrown the burden of making out a case for not continuing this Act upon the non-official Members. My Lord, I understand that it has been the rule in respect of all legislative business which comes before the Government of India, that the Hon'ble Member who introduces a Bill should state clearly the reasons upon which his motion is based, and should set out before the Council the facts and circumstances which would enable Members, non-official, as well as official, to decide whether to vote in favour of the Bill or against it. The Hon'ble

Member has told us very briefly that all that the Bill aimed at was the continuance of the Seditious Meetings Act for only five months. He has also told us that the Local Governments have unanimously demanded it. So far as he was concerned, he was no doubt free, as he was willing, to surrender his judgment to the judgments of the Local Governments, particularly of one which is presided over by a gentleman of the experience and large views of Sir Edward Baker. But he seemed to forget that there were other Members in the Council who were not in the confidence of these Local Governments as he evidently happens to be; who did not know what the circumstances were which had led Sir Edward Baker and other Local Governors to ask for a continuance of this Act. My Lord, there is a certain responsibility resting upon the non-official Members of this Council as well as upon the official Members. It is also given to us to think, and we have to satisfy the still small voice that even we feel within us that there is some justification for supporting a motion to saddle the Statute-book of the country with a measure which was described by Sir Harvey Adamson, as many speakers have reminded the Council as a repressive measure of considerable potency. This exceptional measure, intended for exceptional times and exceptional places, has now been on the Statute-book for nearly three years. The Government of India when they passed it almost offered apologies for introducing it, and for asking that it should be continued for three years—such was the state of the country at the time Sir Harvey Adamson repeatedly said that the measure was intended for exceptional times and exceptional circumstances only, and he took the greatest care to point out that in order that the measure might lack the element of the permenancy, the life of every notification which was to be issued by a Local Government to declare an area to be a proclaimed area was confined to a period of six months.

"My Lord, the assurances given by Sir Harvey Adamson and the remarks which fell from Your Excellency in concluding the debate, had led the people to believe that unless some very special circumstances which would justify the continuance of that measure were shown to exist, it would be dead on the 31st of October 1910. It was with much surprise and regret therefore that we learnt that, while the Government was at Simla, a Bill would be introduced to give a new life to this repressive measure even before it is dead. I submit, my Lord, that in the circumstances of the case it lay heavily upon the Hon'ble the Home Member to place before the Council facts and circumstances which would enable the non-official Members to decide whether they should give their support to the measure or oppose it. I may be permitted to say, and I am sure Your Excellency will accept the statement, that it is not a pleasure to non-official Members to oppose Government measures. We feel the very reverse of pleasure in opposing them. But we feel, my Lord, that we are here to express opinions which we can justify first to ourselves and then to the public. We feel that we are to be judged not by this Council only but also by the much larger and far more important body of our countrymen who are keenly watching the conduct of non-official Members as well as that of Members of the Government in dealing with any legislation which affects them.

"Now, my Lord, we might all of us agree in the view that when the circumstances which gave rise to this legislation ceased to exist, this measure should have been allowed to die a natural death. Let us see therefore what those circumstances were and whether they exist in the country to-day. When the Regulation of Meetings Ordinance of 1907, which was a prototype of the Act which is now under consideration was issued, it was stated in the Statement of Objects and Reasons which accompanied it that the 'acute disorder' which prevailed in the Punjab and in parts of Eastern Bengal had led to the passing of the Ordinance. My Lord, that acute disorder had almost died before that Ordinance was issued; it certainaly did not exist when in November 1907 the Government decided to pass the present Act. But even

assuming that there were circumstances in 1907 which justified the passing of the Act, or at any rate satisfied the Members of the Government that it was necessary in the interests of good government, in the interests of the preservation of the public peace, that a strong measure like that should be continued or be placed on the Statute-book, the Hon'ble Member who has put forward the motion under consideration before the Council was bound to satisfy this Council that these circumstances or conditions similar to them exists to-day when he seeks to give a new life to the measure. When piloting the measure through the Council, the Hon'ble Sir Harvey Adamson said that he had no desire to disguise the fact that the measure was one of considerable potency. He justified it however on the ground that in his opinion in the then condition of India such a measure was necessary. My Lord, what are the conditions which exist now? Do they make even the faintest approach to the conditions which existed in 1907? Sir Harvey Adamson complained at that time that the scheme of constitutional reforms which the Government had formulated had not brought about such a change in the public mind as had been expected, and that the Government felt that they had to deal with a section of irreconcilables. But we know that the scheme of reforms originally put forward has, after undergoing many important changes, been carried out since; and notwithstanding the fact that there have been some serious complaints about the regulations framed under the new Councils Act, no one can deny that the reforms as a whole have been received with a feeling of gratitude and have greatly improved the political situation. I believe that there has been a consensus of official and non-official opinion that the reforms carried out have brought about a marked change for the better in the attitude of the general public towards the Government. Is that change to count for nothing in determining whether repressive measure should be allowed to die its natural death or should be kept alive by fresh legislation.

"We have been told that the Local Governments have asked for the Act. With due respect to the Local Governments we cannot blindly substitute the judgments of Local Governments for our own. My Lord, it is difficult for us to understand why, while all that is open and visible to the public eye indicates an absence of those conditions in the country which should justify the re-enacting of a repressive measure like the one before us, while it is undeniable that there is a world of difference between the conditions which obtain in some Provinces and those which prevail in others, all the Local Governments are unanimous in recommending that such a measure should be brought on the Statute-book for the whole of this vast Indian Empire.

"My Lord, the political situation in India was carefully summed up not long ago in the letter which the Government of India addressed on the 14th March last to the Government of Bengal and to the other Local Governments. In that letter Your Lordship in Council was pleased to recognise that nowhere in India was any considerable proportion of the population imbued with the spirit of disaffection towards the British rule; that there was a party, small in numbers, though of considerable influence in the opinion of the Government, which was opposed to the continuance of British rule; that among this small party also there was a class which was opposed to a resort to violence; that the other class which advocated and practised the methods of the terrorism consisted 'for the most part of youths who are still at school or college, and of young men who have not long passed that period of their life.' The letter went on to say that these active revolutionaries were most prominent in parts of Bengal and Eastern Bengal and Bombay; that their movement had spread to the Central Provinces and Berar, and to the Punjab; but that it had made little headway in Madras and in the United Provinces; and that the Government of India had received no information of its existence in Burma and in the North-West Frontier Province. That being so, I appeal to Your Lordship, I appeal to every Member of the Council, to judge what change has been brought about since March last which should justify the saddling of my Province, the

United Provinces, or of Madras, or of Burma or the North-West Frontier Province with this repressive measure. My Lord, one event has no doubt happened, and that a very sad one too, namely, the death of our beloved King-Emperor. But the demonstrations of grief which that event called forth should have satisfied even the most sceptical mind that the heart of the people is sound ; that they mourned the loss of the King-Emperor with as much sincerity as their fellow-subjects in any other part of the Empire ; that they would not have done so if they did not appreciate the British connection and did not want the British rule to continue. What else, my Lord, could be the meaning of the great demonstration that took place in Calcutta, where a hundred thousand Hindus walked a long distance in a burning sun, bare-headed and bare-footed, in order to give united and public expression to their grief ? My Lord, there have been manifestations of similar grief all over the country, and there are movements going on at present in all Provinces to raise suitable memorials to the revered memory of Edward the Peacemaker. With these evidences of a strengthening of the feeling of loyal allegiance to the Crown that has long existed in the minds of the people, is this the time for the Government of India and for the Local Government to ask for a continuance of a repressive measure the life of which is to expire by efflux of time in October next ? One should have thought, my Lord, that the Government would at such a time have welcomed the removal by natural death of a measure which it has seldom, if ever, found it necessary to use, but which must always be a source of irritation and complaint to the great body of the loyal and law-abiding population of the country, particularly as there is nothing special in the existing circumstances which would justify an opposite course.

"It may be said, my Lord, that the Government cannot ignore the existence of the band of terrorists and anarchists. Your Lordship was pleased, in that same letter to which I have referred, to deal also with the case of these misguided enemies of their country and of its Government. I need not repeat, what several other Members have said before me, that every sensible man who has the interests of this country at heart must deeply deplore all anarchical outrages and all unconstitutional action. But it cannot be said with any reason that the prevention of public meetings of twenty persons and more will exercise any restraining influence upon evil conspiracies, on the action of those who hatch their plots in secret, and who must, by the very nature of things, always endeavour to carry out their diabolical designs without all avoidable publicity. It is important to remember in this connection that the existence of the Act in question has not evidently hampered terrorists in their action during the last three years. This Act cannot therefore be claimed to be a remedy for that disease.

"Your Lordship's Government was pleased in the letter of March last not only to analyse the political situation but also to suggest some suitable remedies, if I my say so, with the eye of a statesman. The Government expressed its belief that the seditious movement is in the main due to ignorance and misapprehension of the natural consequences of British rule in India ; that though there existed in the ranks of those who were hostile to that rule a residue of implacable hatred of all alien intrusion, 'all the information which has been placed before the Governor-General in Council supports the view that the majority of the advocates of nationalism have been misled by shallow arguments and prejudiced statements.' The obvious remedy for this state of things was that the other side of the case should be put before these young men. Your Excellency therefore wisely called upon all officers of Government, and indeed all supporters of law and order, ' to do his best, each in his own sphere, to combat misrepresentation and to remove misapprehension regarding the character and results of British rule.' The officers of the Education Department were rightly asked to check the spread of seditious views among their wards by sympathetic discussion and kindly guidance ; the attention of all District-officers was directed to the necessity of taking leading men in each district

into their confidence, and of cultivating a courteous and considerate demeanour towards all with whom they are brought in contact. The concluding portion of the letter stated:—

'The Governor-General in Council believes that there is every reason to expect success for a policy on the lines described in the foregoing paragraphs. There is much ignorance and misunderstanding on the subjects of British rule in India, and thence has arisen a spirit of disaffection. That spirit has not spread for, and the wrong impressions on which it rests are capable of removal by conciliatory discussion and earnest remonstrance. Many supporters of this so-called nationalist programme have taken alarm at the development of what they regarded as a permissible political movement into the fanatical outrages of the terrorist section. The movement is favourable for detaching them from the party of disaffection and for convincing all but the most extreme of the danger to the general welfare of presistent attacks upon the foundations of the established Government. The great body of the people are entirely loyal and prepared to join with the officers of Government in this mission against disaffection.'

"I submit, my Lord, that that was a clear and statesmanlike pronouncement on the policy which the Government should pursue at the present time. It supplied the true remedy for the disease from which the country has in parts suffered and is unfortunately still suffering. But these methods of conciliation require that a free and public discussion of grievances and views should be encouraged rather than discouraged, cases of any serious abuse of the liberty of speech or meeting being left to be punished by the ordinary laws of the land. At any rate the policy of sympathetic guidance and conciliation which the Government of India deliberately decided upon but a few months ago will be to a large extent stultified if this fetter on the freedom of speech and action is continued, if this repressive measure is given a fresh lease of life. This being my view of the situation, I submit with great respect that the Government should not go on with the proposed legislation. I fully realise how vain it would be to hope that the Hon'ble Member in charge of the Bill will drop the motion. But, my Lord, I consider it my duty to say that it is very unfortunate that he should not be able to do so. There is nothing more important at this juncture for the good government of this country than that there should be a feeling abroad among the people that the Government are willing more than over to listen with sympathy to the representations of Indians to give due consideration to the wishes and opinions of representative Indians, who are quite as much anxious to uphold law and order, as being the *sine qua non* of peaceful progress, as any official member can be. Your Lordship has seen that there is a large body of unofficial opinion almost begging that the Government should not proceed with this measure. In these circumstances, unless the Hon'ble Member can lay before the Council the opinions of the Local Governments that he has received and relied on, unless he can disclose facts and circumstances which show that there is a danger that, if meetings are allowed to be held freely as they used to be held before this Act was passed, this circumstance will tend to disturb the public tranquillity or lead to some other crime which cannot be dealt with by the existing enactments, I submit, it cannot but be deplored that the Bill should be proceeded with and passed.

"I do not wish to dwell at length upon the existence of other provisions in the law which place ample power in the hands of the Government to suppress meetings which are likely to promote sedition or to lead to a disturbance of the public tranquillity. Some speakers who have spoken before me, including the Hon'ble Mr. Madge, have said that the existing law is not sufficient. My Lord, it is not necessary for me to enter into a discussion with these gentlemen as to whether that is so or otherwise. My lawyer friends have presented the correct view of the situation. Besides, an ounce of fact is better than a ton of argument. The Council has had a few such facts placed before it,

facts which go to show that meetings of 50,000 persons and more in Calcutta, and other large meetings in Nagpur and Eastern Bengal, have been dispersed quietly under section 144 of the Criminal Procedure Code It may be said that if it is a fact that both in that section and in the section relating to unlawful assemblies there is ample power given to the Executive to disperse any assembly which it considers to be objectionable, then why should we object to measure of this character, which merely gives the same power to Government which it already possesses under the other Acts? The reason for this is this. We submit that while the powers which the Government possesses under the other Acts are amply sufficient to deal with every individual case or cases of the abuse of the right of meeting that may arise, the conferring of this general power of proclaiming an area, by which the voice of the whole population there may be silenced, is most dangerous and unjust. My Lord, what is it that may happen under such an Act? As some of my friends have pointed out, some mischievous miscreant or some misguided young man talks a little nonsense in a place, the police send up long reports of danger to the State or to the public peace, and the whole district is proclaimed. I do not say that the Lieutenant-Governors and Governors of Provinces do not fully weigh the situation; but they are after all human, and therefore liable to err. They have to act upon the reports of the man on the spot, who in his turn must act upon the reports of the police or of the Criminal Investigation Department. And we have had sufficient instances of the abuse of the powers given under the Act.

"We have seen how for the faults, more imaginary than real, of a few men or a small coterie of men, the population of a whole district, the great bulk of whom, must, as the letter quoted before has told us, be regarded as undoubtedly loyal to the Government, have been deprived of the right, which they enjoy under the British Government, of free public meeting and of giving free expression to their opinions and their sentiments, to their grievances and desires in relation to public questions which affect or interest them. It cannot but be regarded as a serious public grievance that, for the misconduct of a few individuals, the whole community in a locality should be prevented from freely exercising a privilege which they have never abused.

"My Lord, not only has no necessity been shown for the measure before us, but there is also the fear, as my friend the Hon'ble Mr. Gokhale has pointed out, that a repressive measure may itself, by being abused in its working, lead to promoting the evil which it was intended to cure. The Seditious Meetings Act and the Press Act have both already given illustrations of the truth of the old adage that the sight of means to do ill-deeds often makes ill-deeds done. Look for instance at the action of the authorities in Eastern Bengal in suppressing three district conferences and the meeting which sought to help the depressed classes. I venture to doubt if the said conferences or the said meeting would have been stopped if the Seditious Meetings Act had not been in existence. Look again at the action taken in several places under the Press Act in contravention of the pledge given by the Government when it was going through the Council, and think of the irritation which the abuse of its provisions must cause in the public mind. So long as the Government will keep these two measures on the Statute-book, I regret to say, but I feel it my duty to say it, so long will all efforts to conciliate public opinion generally be beset with unnecessary difficulties, will continue to be unnecessarily difficult of accomplishment.

"I do not wish to detain the Council any longer. But I cannot help referring in this connection to the action taken under the Press Act with regard to Mr. Mackarness' pamphlet. I know that several Local Governments have thought it wise to suppress that pamphlet. I have no doubt that they believe that they have acted rightly in the matter. But with due deference to these Governments, I venture to think that if the new Press Act had not given them the indefinitely wide powers which it has given them, not one

of them would have ever thought of suppressing the pamphlet. None of them perhaps would even now think of prosecuting Mr. Mackarness for it. The pamphlet might not have done full justice to the efforts of the Government to improve the police. But what did it aim at except a suppression of the evil practice which it exposed? It has been said, my Lord, that the Government of India have been denouncing the practice of torturing accused persons with a view to extort confessions from them, at least ever since they enacted the Indian Penal Code, which has laid down that any person who would so put people to torture would be liable to be punished with imprisonment which may extend to seven years. But the existence of such a provision has not evidently proved to be a sufficient deterrent, and in view of the facts brought to light in some recent cases, it was clearly necessary in the public interests to draw public attention to the evil with a view to have special measures taken to effectually discourage it."

His Excellency the PRESIDENT: "I am afraid that I must interrupt the Hon'ble Member, Mr. Mackarness' pamphlet has got nothing whatever to do with the present discussion."

The Hon'ble PANDIT MADAN MOHAN MALAVIYA: "I bow to your Lordship's ruling. I wished to point out how easily a repressive measure may be abused, and may give rise to great irritation, when the object of the Government is that cause for irritation should not be given.

"I will now conclude. I think I have said enough to show that no justification has been made for proposing an extension of the life of the Seditious Meetings Act; that the powers which the Government possess under the existing provision of the law are amply sufficient to effectively prevent as well as to punish any attempt to promote sedition or to disturb the public tranquillity which might be made by persons who are hostile to Government and whose number is small; that the great bulk of the people are loyal to the core, and are more than ever inclined to co-operate with Government in maintaining law and order; that the policy of conciliation is in these circumstances the only safe and wise policy; that it should be steadily and earnestly pursued; that unless some overpowering causes intervene, nothing should be done which is likely to interfere with the success of that policy. I believe that no such causes demand a continuation of an Act of an abnormal character, which must operate against the return of normal relations between the Government and the people. For these reasons I beg humbly to oppose the motion which is now before the Council."

His Honour THE LIEUTENANT-GOVERNOR OF THE PUNJAB: "My Lord, it was not my intention to have spoken upon this measure, since in the capacity of Head of one of the Local Governments I had urged the continuance of the Act, at any rate until next spring. And I am very sorry indeed to trench at so late an hour upon the time of the Council. But I feel that some non-official Members have put rather a strong case for some explanation of the reasons for the continuance of the Act, and also as I shall not probably have the opportunity of explaining my own position in the matter next spring, it appeared to me that, with your permission, I might say a few words on the present occasion. We have heard that Local Governments are very stiff-necked, and there is no doubt that we are very stiff-necked when any measure or any action is put forward which we believe to be inimical to the prosperity and the tranquillity of the Provinces in which we are so much interested. I am, however, glad to recognise that two non-official Hon'ble Members have also called us human, and I hope we are most thoroughly human and most thoroughly in touch with the aspirations and the wishes of the communities which are temporarily placed under our charge.

"Now nothing would give a Local Government greater pleasure than to be able to dispense with any of these measures; but circumstances, however, frequently render the introduction and the enforcement of such measures necessary. It is perfectly true, as

Hon'ble Members have said, that the condition of the Punjab at present is happily very different to what it was in the spring of 1907; and nobody recognises that fact more fully than myself. I believe that the present condition of the Punjab is largely due to the introduction by Your Excellency's Government of the reformed Councils, and generally to the policy of conciliation which has been followed for a considerable time. At any rate, it has been my own practice, and I have enjoined that practice upon all my subordinates, that they should take every opportunity of putting themselves in the closest touch with all persons who can put forward any reasonable claim to represent any important section or sub-section of the communities with which they have to deal, and that they should ascertain the wishes and views of these people informally in every way, and should put the case of Government before them so that they may move them by logic and not by repression. That policy, I am happy to say, has in most cases been very successful; but we cannot rely upon that policy entirely. One Hon'ble Member has referred to the old legend of the Danish King in whose proceedings I may be supposed to take a certain amount of personal interest, and he has pointed out that it was impossible to suppress the billows of the sea. I do not quite think that that was exactly what King Canute attempted. I believe that all he was asked to do was to order the tide not to rise beyond a certain point, and he wished to show to his somewhat sycophantic advisers how very impossible it was to do such a thing merely by the expression of a polite wish or even by the utterance of an order to which there was no ultimate sanction. But we can do a good deal, not to suppress the billows of the sea but to regulate their action and even to control the tides. A good many ships have been saved by pouring oil upon the troubled waters. That Your Excellency's Government has done with the greatest success, by pouring the oil of conciliation upon the troubled waters of India. But other measures are sometimes necessary.

"I belong to a Province which is blessed with the possession of a great many somewhat tribulent rivers which, if allowed to pursue their own irregulated courses, would do infinite damage for want of proper training. Therefore, we construct training works founded upon experience as to the best way of carrying out such works, and the result is that these training works prevent these rivers from doing damage. widespread and serious, and divert them into more profitable courses to the great benefit of the country and all that it contains. I venture to think that the Press Act and this Bill for the Prevention of Seditious Meetings are works akin to these physical training works by which we guide the forces of our great rivers on proper lines. They operate to divert public actions and public movements from channels which can only result in widespread disaster and misfortune.

"The trouble in 1907 in the Punjab was very largely due to the perverse and pestilent teachings of a very small clique of persons some of whom did not belong to the Punjab. In fact, some came from that Province which we are called upon to admire as a perfect Eden in India—the United Provinces. These persons used their natural intelligence to operate upon the mines of the Punjab peasants and tried to make out to them that they were being badly used by a base and tyrannical Government, and by misrepresenting in the most serious way the actions and the intentions of that Government. Now, the Punjab peasant is a person with whom it is rather difficult to deal. As a rule he is prosperous, loyal and faithful, and nobody has a greater admiration for the peasant of the Punjab than I have myself. But he is liable, when worked upon in a clever way, especially when his religious feelings are approached, to sudden ebullitions of violent temper which, in the case of the Punjab, are particularly dangerous. I have pointed out on several occasions that the Punjab furnishes the whole frame of the Indian army—this means that an enormous number of soldiers upon the active list, upon the retired list, and in the reserves are scattered throughout the Punjab villages: and these men are very liable to have their feelings worked upon; and

if their feelings are worked upon they form a nucleus and leaders whom the rest of the people following may often get into serious trouble. Now, happily, all that particular gang of persons who were so energetic in the beginning of 1907 in misleading the people have left the Punjab for the Punjab's good, or else have been temporarily detained in prison. That, I believe, has also very largely conduced to the present quiet of the Punjab. Unfortunately, during the winter and spring of this year it was reported to me by local officers that a similar campaign of misrepresentation, directed not only against the British Government as by law established in this country, but also against other important sections of the community, was being carried on by a similar set of men to those who had given us so much trouble in 1907. It was done very clearly. Meetings were got up for purely social purposes or for purely religious purposes, but those meetings were diverted to totally different objects, and a great deal of racial and religious odium was thereby being excited. At the same time it so happened that some of the Punjab soldiery whose minds had been perverted and contaminated outside the province had had to be dismissed from the Army and had returned to their homes. The presence of these men was utilised by the leaders of this agitation to get up a movement condemning, on religious and racial grounds, all service under the British Government in the Indian Army. Such a movement could only have had the most serious and disastrous results if it had spread in the Punjab, and it would have been the ruin of the peasantry, who have honourable careers open to them at present in the Army from which they derive respectable incomes.

"It is alleged that it is quite easy for the Local Government, under the provisions of the ordinary law, to stop such meetings. Of course it is perfectly easy for the District Magistrate to suppress a meeting when he knows that the conditions under which that meeting is held and the circumstances in which it is held are so electrical as to render it almost certain that the holding of the meeting will produce a breach of the peace. But that is not always the case. To have a breach of the peace you must have two sides, and at a great many of these meetings the people were practically all of the same class and were brought together for what they supposed to be a common object of their own class; and consequently it was open to the agitators to pervert and contaminate their minds without there being any immediate prospect of a breach of the peace. It is quite possible that the action which the men were taking might have led to more than a breach of the peace—to general disturbance of order; but such disturbances would not have been an immediate consequence of these meetings and it would hardly have been possible, so my local officers have represented, for the District Magistrate to take action for the immediate suppression of those meetings. Besides, we have heard a good deal of that much-abused force, the police. It is not my business on the present occasion to take up any brief on behalf of the police; but, assuming for the sake of argument that the police-force is as black as it is painted, surely it is not a satisfactory thing that we should have the police perpetually interfering for the suppression of meetings. It appeared to me, therefore, that it was very much better to act in an open and straightforward way and to apply this Act to the Rohtak district where these meetings were most frequent, and where some very large meetings were contemplated which I was assured would probably led to very serious disturbances between the Hindus and Muhammadans of that district as well as to active discontent and sedition towards the British Government. I ought to say at first that we have done all that we could to get hold of the persons interested in these meetings and to try to persuade them that the action they were taking was most undesirable not only in the interests of Government and the public peace but in the interests of the national cause which they professed to have at stake. We did all we could by private means and private persuasion to get them to drop the campaign which they were conducting, and it was only when all these measures failed that this final measure was taken and that we

applied a firm and well considered training work to train the minds of the people in the direction in which it was most suitable for them to go.

"Well, the result of the extension of the Act was that the meetings were all dropped. We did not in the least prohibit the meetings. We were perfectly content that they should take place provided we knew who were the persons who would attend the meetings, because a great many of these agitators were people from outside the district altogether. They came and disappeared in the course of a night, and it would have been impossible to have bound them over as has been suggested as a suitable way of dealing with such cases. Now I can only say that the result of the extension of the Act to the Rohtak district has been, according to the opinion of the local officers, satisfactory. I may say that one of these local officers is an officer who has been in the district for some six years and is intimately acquainted with every portion of that district and is quite an expert in the particular dialect which is spoken in that district, and therefore he is a man whose word may be taken in a matter of this kind as specially reliable. He was an officer who was most unwilling that these *panchayats* should be interfered with in any way, and it was only after seeing the injury which was being caused that he was forced to ask for what he termed special ultra-legal powers in order to enable him to stop what he believed to be most dangerous. Well, he and the Commissioner both tell me that nothing but good has resulted from the application of this Act. The people have quietly settled down, and all this seditious talk which was going on, abuse of their Muhammadan brethren, abuse of Government and its officers, and the kine-killing agitation has ceased, and the Rohtak district is now as happy and peaceful as it was before the agitation commenced.

"There was a special reason for operating in this district, and that was that Rohtak is a curious district. In fact, on one or two previous occasions, as I suppose is not known to many Hon'ble Members present, very serious Hindu-Muhammadan riots have occurred which have led to a great deal of bloodshed and a great deal of damage to the property and prosperity of the district. The people there are bucolic and quiet as a rule, but intensely excitable, and it is excessively dangerous to allow matters to come to such a head that there should be any danger of an outbreak of religious strife or of sedition against Government.

"My Lord, I have ventured to take up the time of the Council to this extent in order to show that Local Governments, human though they be, and stiff-necked though they are called, do not ordinarily take action in a matter of this kind, which is entirely opposed to their feelings and desires, unless they have the very strongest possible grounds for doing it. I also venture to think that it is highly desirable that Local Governments, when such circumstances arise as to render it necessary that something should be done to divert people's attention from a perverse and pestilent agitation, should have at their hand a weapon which would enable them to give immediate and instant legal effect to those measures which they think are absolutely necessary for the preservation of public order and peace.

The Hon'ble MR. EARLE: "My Lord, before I comment upon this Bill I would like to refer to a point that has been raised by the Hon'ble Mr. Gokhale, who complained that the opinions of Local Governments had not been furnished to him. It was yesterday that he made this demand. We were only too anxious to comply with his request because we thought that it was desirable that all Members should be furnished with the opinions of Local Governments on a measure on which they were going to speak the very next day. Therefore, both the Hon'ble Home Member and myself endeavoured to arrange to give him copies of those papers. Unfortunately, the letters that have been received from Local Governments were all of a strictly confidential character. In the ordinary course of business, when a legislative measure comes up for consideration, we call for opinions from Local Governments, and in many

cases the letters which we issue and receive are of a confidential nature, and in this case that was what happened. As a rule, after these confidential letters have been received, we frame a Bill, then it is introduced in Council, then the Bill is published and opinions of Local Governments are called for. These opinions of Local Governments are invariably placed in the hands of Hon'ble Members. It is only in those exceptional cases such as the present, where we have to introduce a Bill and pass it on the same day, that a difficulty arises. We quite recognise that Hon'ble Members are at a disadvantage, and we shall try and arrange that in future some means shall be adopted so that they shall have this information before them. It is quite as much to our advantage as to theirs that Hon'ble Members should be supplied with full information. In the present case we think that the opinions of the Local Governments would have decidedly strengthened our case.

"I now, with Your Excellency's permission, will make a few remarks as regards the Bill itself. The chief note struck, as far as I can see, by Hon'ble Members who have opposed the Bill is that as the political situation has improved—and this is admitted—therefore the extension of this measure is unnecessary, and an act of supererogation. I must say that I think that if Hon'ble Members who have opposed the Bill lay under the obligation, which rests upon the Home Department, of reading numerous reports and digesting a large mass of literature dealing with seditious subjects, they would speedily change their point of view and agree that it is better to nip sedition in the bud than to allow it to come to a head and then have to initiate prosecutions against offenders. My Lord, sedition is not dead; it is not even merely dormant; it is wakefully alive and it is merely waiting for its opportunity when it finds the authorities are off their guard. There is not a doubt that if they had the chance, the revolutionary party would make speedy use of the weapon of inflammatory oratory. If a speech such as my Hon'ble friend Babu Bhupendra Nath Basu has made to-day is possible in the Imperial Legislative Council, Hon'ble Members may easily gather what the extremists and revolutionaries will do in out-of-the-way districts where there is no authority to watch them.

"It has been argued that a sparing use has been made of the Act, and that therefore its extension and its retention upon the Statute-book is unnecessary. It seems to be forgotten that the whole object of this Act is to meet exceptional circumstances of danger. As the Hon'ble Sir Harvey Adamson, the late Home Member, said in 1907 when this Bill was before the Council, this measure is designed to operate in exceptional circumstances, in exceptional places and in exceptional times of insecurity. The fact that very sparing use has been made of it seems to me to be proof that the intentions of the Act have been very faithfully carried out.

"Then it is argued that the authorities have sufficient powers under the existing laws. Now, it is undoubtedly true that under the Calcutta and Suburban Police Acts, and the Bombay City Police Act, the authorities are armed with considerable powers which enable them to deal with seditious meetings. These Acts, however, of course, are purely local in their application and they have no reference to the mufassal and yet it is in the mufassal rather than in the town areas that the greatest harm can be done. Now, the Mufassal Police Acts are notoriously deficient, with the exception of the Bombay District Police Act, in giving the requisite powers for dealing with these meetings. No doubt use can be made of section 144 of the Criminal Procedure Code. That section enables the authorities to prohibit any individual or the public generally from taking action which is likely to cause a breach of the peace. There are, however, legal difficulties in connection with this section, into the details of which it is not necessary for me to enter, which render this section not entirely suitable, and it is not desirable that the authorities should be tied down to the use of that section only as a means of general prevention.

"As in 1907, I think there has been considerable exaggeration and misapprehension as to the scope of the Act. Even in the very few areas which are proclaimed from time to time, public meetings can be held, provided that they are not held for the furtherance and discussion of subjects likely to create a breach of the peace or any political subject or for the exhibition or discussion or distribution of written or printed matter relating to such subjects. Moreover, the notifications which are issued from time to time by the Local Governments hold good only for six months, and even during that short period of six months they can withdraw a notification if they find that the circumstances of any particular area have improved so as to render the retention of the notification unnecessary. Similarly, in regard to Provinces, should any Local Government come up to the Government of India and say that the extension of the Act which was made in January 1910 is unnecessary, I cannot imagine for one moment that the Government of India would insist upon these provisions remaining in force. It rests with the Local Governments to make representations, and in this way the view held by several Hon'ble Members that Local Governments should have some say in this matter would be met.

"Then it is said that the Seditious Meetings Act has a tendency to drive sedition underground. In regard to this matter, I thoroughly agree with what His Honour Sir Edward Baker said in 1907. His Honour said on that occasion that publicity and self-advertisement were the very breath of the nostrils of seditionists and revolutionaries, and that, if these were taken away, half the attraction of the game would go with them. There the question is put in a nutshell. Again it is said that public meetings act as a safety valve. I think that this statement certainly requires qualification. We know only too well that meetings are frequently held in this country not so much for the purpose of giving vent to discontent which actually exists as to create discontent where none previously existed. I had personal experience of this only two years ago in the Patna district. There we had a contented and peaceful peasantry, but agitators came amongst them and tried to create trouble. I am glad to say that the agitators were not successful, but that was chiefly because the peasantry would have nothing to say to them. The criminality of the agitators was not the less on that account, however, but was rather the greater. In this connection gladly do I testify, as suggested by my Hon'ble friends Mr. Sachchidananda Sinha and Mr. Mazharul Haque, to the general good character and splendid loyalty of the people of Behar. I have served in that Division as an Assistant Magistrate, as a Magistrate and Collector, and lastly as a Commissioner of a Division, and my experience of the people of Behar merely coincides with that of every other officer who has served in what is well and properly known as the 'Garden of India.'

"I notice that in 1907 the Hon'ble Mr. Gokhale observed that if the Bill which was then before the Council became law, social parties would be raided upon and broken up, and that even the host and guests would be hauled up for having held political or public meetings without having given previous notice. My friend Dr. Rash Behari Ghose also said that if the Bill were passed, the police would become absolute masters of the people and that their domiciliary visits, which would not be few and far between, would be certain to create disturbances. I have had very careful inquiries made, and am glad to say that I can find no trace of any such acts of oppression. I notice that my friend Mr. Gokhale referred to trouble created by the authorities under the Press Act. It is particularly noticeable that he referred to nothing of the kind under the Seditious Meetings Act.

"Lastly, as regards the temporary extension which is now before the Council, I think that it is amply justified by the circumstances which compelled the Government of Eastern Bengal and Assam to proclaim three districts in March last, and more recently by the circumstances which, as pointed out by His Honour the Lieutenant

Governor, compelled the Punjab Government to proclaim the Rohtak District. Sober-minded and sober-speaking politicians in the few areas which are proclaimed must, I fear, suffer temporary inconvenience, but they must ascribe that temporary loss of privilege to those firebrands and those who are avowedly disloyal to the British Government."

The Hon'ble MR. JENKINS moved that the Bill be passed. He said: "Your Excellency, I am a newcomer on this Council and I must admit that my head is not sufficiently inured to the stream of oratory which has been poured upon it to-day, but it has at least given me a very lively idea of what Sydney Smith means by the punishment of being preached to death by wild curates. I hope, however, that in course of time I may become a hardened toper at the fountain of this eloquence. Now I hope the Hon'ble Members who have spoken in opposition to the Bill will take this as an excuse for my not following them into the innermost recesses of their arguments or upon their high flights of oratory. I will endeavour as soon as possible to return to solid ground, which at this time of the afternoon is perhaps what the Council will desire.

"The question, therefore, as it appears to me, is this: is this Bill necessary? Even some of those Hon'ble Members who have spoken in opposition to the Bill would, I think, support it if they were convinced that it was necessary. Now the argument that it is not necessary is generally based upon the opinion that the state of the country is very much improved. I am aware, and very gladly admit, that the state of the country has improved; but that is not all. We still have with us the party whom I prefer to call the Revolutionary Party, because their aim is revolutionary and nothing else, and they attempt to attain their object by plans of campaign which are very carefully laid and by every device which can be suggested by their not small ingenuity. If Hon'ble Members would wish to have a complete list of all the atrocities that have been committed, of the conspiracies that have been formed, of the secret societies that have been set on foot, of all the means which this revolutionary party has used, and is still using, to overthrow the British Government and to introduce lawlessness and disorder—if they would wish that, then I say they are very bad friends of the country. Such a list could be produced. I do not wish to produce it unless I am compelled to do so. Well, my Lord, I wish to put a very simple question to the Council. When these people use every device within their power to attain their aims, is it in the least degree probable that they will refrain from using the weapon of inflammatory oratory if it should be placed within their reach? It seems to me that upon that question the decision should depend. My Lord, I submit that it is not in the least degree probable that they would refrain from making use of that weapon, and therefore I submit that it is necessary that we should have this Bill; and those who are convinced that the Bill is necessary and that we ought to have it, should, I think, come over to our side. My Lord, I think I might be content to base my case upon that ground, but there are a few things which have been mentioned to which perhaps I should give some attention. It is said to us that it would be a most conciliatory measure to abandon this Bill. Even my friend Sir Vithaldas, I believe, said that we should conciliate the people. Let us think for a moment who the people are whom we are to conciliate. I consider that the idea that we should conciliate honest and loyal people by allowing mischief-makers a free hand is very little removed from an insane delusion. Then, as to the band of revolutionaries; why, one might as well attempt to conciliate a band of dacoits by throwing one's doors open to them. It is said also that any legislation of this kind—it is even hinted that this Bill, if it becomes law—may cause a great deal of discontent, that it may in fact produce sedition.

"At one time I was in charge of a town where there had been an outbreak of cholera, and as we do in such cases we disinfected the wells and other sources of water-supply by putting permanganate of potash into them. Some persons, who ought to

have known better, went about amongst the ignorant people and told them that the permanganate of potash was the cause of the cholera. The result was that our people who were engaged in the work had a very bad time of it, as some of our officers in the districts have at present a very bad time. The parallel is exact. The permanganate of potash was the cause of the cholera, and our protective measures are the cause of sedition. Then it is said that we already have in the existing laws sufficient means for dealing with matters of this kind. The state of the case has been explained by His Honour the Lieutenant-Governor and the Hon'ble Mr. Earle. Now, Sir, I have had the misfortune to deal with matters of this kind for some years past, and I have had to consider how far the ordinary law could be enforced. The Hon'ble Members who say that the ordinary law is sufficient look upon it from the outside; but I have had personal experience of it, and I can assure the Hon'ble Members that, with the utmost exercise of ingenuity, we could not make the existing law suffice. And is it probable that, if the ordinary law had been sufficient, we should go through all this trouble in order to provide ourselves with this perfectly useless weapon?

"My Lord, if anything has been said which leads to the conclusion that this Act ought to be placed permanently on the Statute-book, the fault is not mine; it is of those who have forced this discussion upon us. Some Hon'ble Members are firmly convinced that the permanency of the Act during the next cold weather is a foregone conclusion. Well, they know more than I do: but if they will have it so, let it be so, only let it be clearly understood that the prediction is theirs and not ours. My Lord, I submit that nothing has been urged which should deter us from proceeding with the Bill. I move that the Bill be passed."

The motion was put and agreed to.

The Hon'ble MR. G. K. GOKHALE: "My Lord, the question has been put to the meeting, but this should have been a separate motion. The speeches up to now have been on the motion that the Bill should be taken into consideration, and there is an official motion that the Bill should be passed. I wanted to say a few words as to that."

The Hon'ble MR. JENKINS: "My motion was that I introduced the Bill, and I moved that it be passed."

The Hon'ble MR. GOKHALE: "I do not wish to take more than a minute, but I do think I must complain of the tone of the opening remarks of the Hon'ble Mr. Jenkins. I do not think that any officer of Government has any reason to be bored to death or anything else if he wants to discharge his duties properly here, because we have also to discharge our duties here. and I do not think anything is gained by introducing such a tone into the debates in this Council. My Lord, you have done so much to introduce a new tone into this Council; you have watched over this Council with the care with which a parent watches over the interests of her child. I do not think that the Hon'ble Mr. Jenkins is justified in introducing such a tone here."

The Hon'ble BABU BHUPENDRA NATH BASU: "My Lord, with Your Lordship's leave I wish to make one observation. A point was made by the Hon'ble Mr. Earle that if a speech like mine could be made in this Council, it was no wonder that speeches of a very grave character might be made in the meetings which are now to be suppressed. I am very sorry, my Lord, that that observation was made, because in my speech that I made here to-day I studiously avoided any subject which might cause needless offence, and I hope I was strictly within the constitution in offering the few remarks that I ventured to offer to this Council."

The Hon'ble MR. JENKINS: "My Lord, may I explain that I had not the slightest intention of hurting the feelings of the Hon'ble Member, but I perceive that it is not perhaps desirable to indulge in what I considered to be a witticism."

The Hon'ble MR. EARLE: "My Lord, as regards what the Hon'ble Babu Bhupendra Nath Basu has said, I merely meant to convey that his speech was certainly strongly worded in some respects and highly coloured perhaps, and it is perfectly legitimate to speak like that in a Legislative Council. What I meant to infer was that if that was done in a Council like this, subject to all restraint, what must we expect in out-of-the-way places; but I did not intend to convey any imputation whatever as regards the speech of the Hon'ble Member."

His Excellency the PRESIDENT said :—"I will only add a very few remarks to what the Hon'ble Mr. Jenkins has said to this meeting of Council and on the matter which he has so very ably put before you. I am sorry to say we cannot, none of us can, disregard the existence of a revolutionary party. No one has welcomed with greater pleasure than I have the remarks which have universally fallen from unofficial Members of this Council to-day, to the effect that the state of the country is infinitely better than it was and that things are improving politically. These views, expressed as they have been by the opponents of the Act, I know to be thoroughly sound and true, and they have been very welcome words to listen to. But, gentlemen, I cannot help telling you that, to myself, there is a personal factor in our proceedings to-day which I cannot disregard. I cannot but feel that I am at the end of my administration and I do not think it would be right, either by the repeal of the Seditious Meetings Act or by its re-enactment in perpetuity, to commit my successor to a policy of which he had not had sufficient opportunity of judging and of which he might not approve. I feel very strongly that this Act is one of such enormous importance that it cannot be fittingly considered during a Simla session. The unofficial Members who opposed the Act have done so perfectly legitimately and have expressed their views perfectly, straightforwardly and very much to the point. I do not say that I agree with all of them, but they have spoken their views fearlessly, and, I think, generally, with sound commonsense; but I believe they will agree with me that in a very important piece of legislation such as this is, it would not be satisfactory for the country, it would not be satisfactory for India, that we should embark upon a very decided line of policy at Simla and that our action can only be put in effect legitimately in full Council in Calcutta, where every detail of necessary legislation will be fully considered, and where, we may rest assured, that it will be considered carefully and with full and ample knowledge of the state of the country. I do not attempt to foreshadow what that legislation may be, but I am perfectly convinced, and I am sure we may all feel satisfied, that the Act will receive at Calcutta the consideration which it deserves and that my successor will be guided by the opinions he forms of the state of India."

The Council adjourned *sine die*.

SIMLA,
The 19th August, 1910.

R. SHEEPSHANKS,
Offg. Secy. to the Govt. of India, Legislative Dept.

THE PREVENTION OF SEDITIOUS MEETINGS ACT, 1907.

INDEX.

Note 1:—The thick figures at the end of each line refer to the pages of this volume and the alphabets in italics preceding the thick figures refer to the cases having corresponding thick letters against them in those pages.

2:—S in Brevier Roman denotes the section.

A

Act, Prevention of Seditious Meetings, 1907, Object of—Reason for its passing, *A*, **3**.
Prevention of Seditious Meetings Act extended to various places, *H*, **4**, **5**.
Act VI of 1907, duration of, S. 9, **8**—Continuance of Act VI of 1907, *Y*, **8**.
Act VI of 1907—Report of Select Committee, App. *A*, **9**, **10**.
Proceedings of the Council, *B*, *C*, **10**—**44**.
Act XVII of 1910—Continuing Act, 1910, App. *D*, **44**.
Proceedings of the Council, **44**—**86**.

B

Bill, Prevention of Seditious Meetings, Object of, *B*, **3**—Aim, *C*, **3**
British India, Scope of the term, *I*, *J*, **5**
Commissioner of Police, Power to prohibit public meetings, S. 5, **6**, **7**.

C

Cr. P. C., 1898, Ch. IX, public meeting prohibited under, S. 5, **7**, —An unlawful assembly, S. 6, **7**.

D

Definition of the term British India, *I*, *J*, **5**.
„ of the expresssion public meeting, S. 3, **5**.
Disaffection, Meaning—Synonymous with disloyalty, *K*—*W*, **6**, **7**
District Magistrate, Power to prohibit public meetings, S. 5, **6**, **7**.
Duration of Act VI of 1907, S. 9, **8**,—Continuance of Act VI of 1907, *Y*, **8**.

G

Government, Using seditious language regarding, established in India, *D*—*G*. **4**.

L

Local Government, Power of, to notify proclaimed area, S. 2, **5**.

N

Notice, to be given of public meetings, S. 4, **5**, **6**.

O

Ordinance I of 1907, Repeal of, S. 8, **8**.

P

Penal Code, Ch. VIII, public meeting prohibited under, S. 5, an unlawful assembly, S. 6, **7**.

Penalty, on persons concerned in promotion or conduct of public meetings held in proclaimed area contrary to S. 4, S. 6, **7**.

, for delivery of speeches in public places, S. 7, **8**.

Police, Power of, to take report of the proceedings of the public meetings, S. 4, **5**, **6**, Exception, *Ibid.*

Public Meetings, Meaning of the expression, S. 3, **5**.

Notice to be given of, S. **4**, **5**, **6**.

Power of police to take report, S. 4, **5**, **6**.

Exception, *Ibid.*

Power to prohibit, S. 5, **6**, **7**.

Penalty on persons concerned in the promotion or conduct of, held in proclaimed area contrary to S. 4, S. 6, **7**.

Prohibited under S. 5, an unlawful assembly, under ch. 8, Penal Code and ch. 9, Cr. P.C., 1898, S. 6, **7**.

Public place, Penalty for delivery of speeches in, S. 7, **8**.

Scope of expression, *X*, **8**.

Public tranquillity, Offences against, **4**.

R

Repeal of Ordinance I of 1907, S. 8, **8**.

S

Sedition, Prevention of Seditious Meetings Act, 1907,—Reason for its passing, *A*, **3**.

Prevention of Seditious Meetings Bill, Object of, *B*, **3**—Aim, *C*, **3**.

Using seditious language *re* the Government established in India, *D*—*G*, **4**.

W

Words and phrases, British India—Meaning, *I*, *J*, **5**.

Public meeting, *S*. **3**.

Disaffection, *K*—*W*, **6**, **7**.